LORD BROUGHAM'S

LAW REFORMS:

COMPRISING

THE ACTS AND BILLS

INTRODUCED OR CARRIED BY HIM THROUGH THE LEGISLATURE SINCE 1811;

WITH AN

ANALYTICAL REVIEW OF THEM.

BY

SIR JOHN E. EARDLEY-WILMOT, BART.

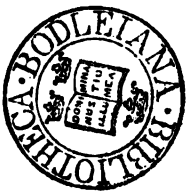
LONDON:

LONGMAN, BROWN, GREEN, LONGMAN AND ROBERTS.

1860

"OPINIONUM COMMENTA DELET DIES, NATURÆ JUDICIA CONFIRMAT."

Cicero.



TO THE

SOCIETY FOR THE AMENDMENT OF THE LAW

I RESPECTFULLY DEDICATE

THIS RECORD OF THE LABOURS OF THEIR PRESIDENT

IN THE SACRED CAUSE OF

HUMANITY, JUSTICE, AND FREEDOM,

WHEREUNTO THE LAWS THEMSELVES BEAR FAITHFUL AND LIVING TESTIMONY.

ADVERTISEMENT.

AN opinion having been generally expressed that the cause of Law Amendment would be benefited by the publication of the Review of Lord Brougham's Legislative career in a more portable form, the present volume is presented to the public with the omission of the Acts and Bills, but retaining, together with a List of them, the Summaries prefixed to each section of the Law, as they were arranged in the larger work. It is hoped that the publication may be thus rendered more interesting to the general reader.

Bath, April, 1860.

PREFACE.

THE present Volume, bearing witness to the extraordinary services rendered by Lord Brougham to the cause of Law Amendment as well as in other departments of Legislation, cannot but hereafter afford assistance and encouragement to those who, with far less hopes of success, may enter upon the same path. It will be found to contain a list of no less than forty Statutes which he has initiated and carried through Parliament, besides upwards of fifty Bills introduced by him at various periods. Great portions of many of the latter have formed the basis of Legislation, and have been incorporated into other Acts. Others still remain unadopted, to furnish valuable hints and suggestions to present or future Law Reformers, or to demonstrate, by their admission hereafter into the Statute Book, the sound and reasonable views with which they were originally framed.

In the present Review political topics* have been carefully avoided. Lord Brougham has long since quitted the ranks of party, but whenever the real interests of the people were to be served he has always put forth his strength on either side. The spectator of present and the reviewer of past events, wide as may be the differences of opinion he may entertain from him on many political questions, regards with sincere admiration and respect a long life spent in avocations having for their object the advancement of freedom, the equalization of justice, and the elevation of the humbler classes of the community to a higher rank than hitherto in the scale of social happiness.

While, therefore, the writer entertains no doubt but that ample justice will be done by posterity to Lord Brougham, he will feel most amply rewarded if he shall have been the means of placing the results of that indefatigable industry more prominently before the eye of the present generation. It would have been a fruitful theme to have

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* The remarks upon Electoral Reform and upon Bribery at Elections, can hardly be said to form an exception; all parties are agreed upon the policy and necessity of a liberal Extension of the Suffrage, while all are equally interested in its purification.

digressed from the comparatively dry subject of Law Amendment to the numberless incidents of interest and importance in which Lord Brougham has acted a conspicuous part—to have discussed his character as an orator, both in the forum and in the senate—to have criticized his portraiture of eminent contemporaries, and to have followed him into the more remote regions of philosophy and science; but such objects were inconsistent with the scope and object of the present work. They will hereafter form the more appropriate province of the biographer and historian.

The Collector of his Acts and Bills and Reviewer of his Legislative career, is most sensible that he has far from dealt with the task he has undertaken in a manner worthy of the weight and requirement of the subject. He may say with Crassus, "Edidi quæ potui, non ut volui, sed ut me temporis angustiæ coegerunt" (*Cic. de Orat.*); and he therefore begs the indulgence of the Public, and of the Profession to which he belongs, for all errors and shortcomings.

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"SPARTAM NACTUS ES, HANC EXORNA."—*Ex Erasmi Adagiis.*

ANALYTICAL REVIEW

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Page 190, in marginal note, *for* "Both to protect title" *read* "Bill to protect title."

Same page, in marginal note, *for* "Proposed to create" *read* "Proposal to create."

Page 235, third line from bottom, *for* "present year" *read* "year 1857."

and establishes a Society for publishing cheap editions of the best English authors.

1807.

In the year 1857, half a century had elapsed since Henry Brougham was called to the English Bar by the Society of Lincoln's Inn. His Parliamentary Career is of shorter date by very few years. A review of the Legislation which has taken place from 1807 till the present time scarcely lights on a single topic upon which we do not see impressed the stamp of his vigorous mind. The object of the present Review is

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1807. not only to shew how largely his Country is indebted to Lord Brougham as a Law Reformer, but to describe the imperfections still existing in the Law, and the methods pointed out by him for their removal. Many of the measures originally proposed by Lord Brougham, meeting at first with no encouragement, but persevered with in a confidence of their utility which no opposition could subdue, were slowly, but at last entirely successful. The value of others was at once so manifest that they became the Law of the land without a dissenting voice. Not unfrequently the most important improvements in our Jurisprudence, initiated by his suggestive genius, passed into the hands and contributed to swell or establish the reputation of men of far less capacious intellect, but whom political partizanship or accidental circumstances had rendered for the time more powerful in the Senate. More plagiarism has been perpetrated upon Lord Brougham, while living, than was ever committed by school-boy upon dead authors. We see changes in the Law daily proposed, as if for the first time, and defended with an amusing gravity or a seriously announced conviction of their necessity, by men who for twenty years have, without complaint or murmur, sat quietly under the abuse—then, when the evil has become universally recognised and condemned, their indignation at its continuance knows no bounds. The quality, however, of statesmanship, at all events of the higher class, is to march in advance of public opinion, not to follow in its rear. It was this foresight which made the immortal Chatham and his highly gifted Son to be pre-eminently Leaders of the People, and gives Brougham a high place in the

Lord Brougham as a Law Reformer.

First quality of statemanship.

glorious list of Lawgivers to our country. Not that this quality alone can make any man a statesman. To acute discernment must be added other qualities no less important, unshrinking courage, indefatigable industry, perseverance regardless of check or disappointment, and honourable ambition to serve the nation, without reference to personal advancement. All these characteristics belong, in a remarkable degree, to the eminent individual whose career, as a Law Reformer, this narrative purports to record, especially the last; for if there is any part of the character of Lord Brougham, which the future historian will dwell on with satisfaction, it is his patriotism. From the period when he left office in 1833 until the present time, he has pursued, without deviation, an independent course of action, in the trammels of no party, and having for his sole object the promotion of every improvement, legal, political, and social. Opportunity might be taken to advert to the treatment which he experienced at the hands of the Ministry with whom he had acted and was associated; but, in an inquiry like the present, political discussions must have no place. Even although the share Lord Brougham had in the success of the Reform Bill of 1832 is matter of history, that and other portions of his extraordinary life may be easily left out, in a review of the occurrences in it which relate to Law Amendment, and yet his general reputation suffer not the slightest diminution by the omission. The memorable part he has taken in the abolition of the Slave Trade and the extension of Education, requires nevertheless the description of his Acts and Bills, introduced or carried upon

1810.

His conduct since he quitted office in 1833.

1810. these important questions, though not strictly coming within the province of Law Reform.

Member for Camelford, 1810.

At the commencement of the year 1810 Mr. Brougham entered the House of Commons as member for the borough of Camelford, under the interest of the Earl of Darlington, afterwards Marquis of Cleveland. The vacancy had occurred through the accession of Lord Henry Petty to the Marquisate of Lansdowne, a dignity to which that nobleman has added lustre by a long life of brilliant statesmanship, political integrity, and private worth. Mr. Brougham had brought with him to the English metropolis a great reputation from the High Court of Session at Edinburgh, where he had commenced his professional career and had practised for several years. In London he had already amply added to his fame. In 1808, the year after he became a member of the English bar, he had acquired great distinction by the eloquence and talent which he displayed as counsel at the bar of the House of Commons for the merchants of Liverpool, by whom he had been employed to support their petition for a repeal of the Orders in Council respecting America. No sooner had he entered that House—the floor of which is the natural home for those destined to lead their fellow men, but is surrounded with snares and stumbling-blocks to mediocrity—than, conscious of his powers, he began at once, heart and hand, to mingle with the combatants.

Mr. Brougham's maiden speech, 5th March, 1810.

On the 5th March, 1810, when a motion was proposed by Mr. Whitbread for a vote of censure upon the Earl of Chatham for having transmitted a narrative of particulars respecting the recent expedition to the Scheldt,

Mr. Brougham spoke for the first time. On the 15th June, in the same year, he moved an address to the Crown on the subject of the slave trade, which had been ineffectually checked by the pecuniary forfeitures imposed by the Act of 1807. The horrors of this abominable traffic in human flesh had long excited his detestation. In a work on Colonial Policy, published in 1803, he had already expressed strong opinions on its unnatural and unchristian character, and his assistance in Parliament was hailed with cordial satisfaction by that Sacred Band of brothers knit together in the cause, of whom Wilberforce was chief. Almost up to that period the progress of the abolitionists had been tardy and interrupted. The powerful ministry of Pitt had shrunk from effacing this national disgrace. When we dwell with admiration upon the passages of majestic eloquence which he uttered upon this fruitful theme, the just and enlightened principles he propounded, his vehement denunciations of the friends and advocates of the traffic, and when, notwithstanding this, we find him postponing the measures for its abolition from year to year, till at length his great Rival and Successor in power inherited the difficulties of the question, and with them the glory of its triumph, we must reluctantly admit, in the case of so powerful and great a Statesman, that his love for truth and justice waxed faint before the heat of his personal ambition, and that he preferred the temporary favour of his Sovereign to the lasting respect and approbation of Mankind.

1810.

His work on Colonial Policy, 1803.

Mr. Pitt's vacillating policy.

In the course of his speech Mr. Brougham thus describes the necessity of more coercive measures

Necessity of more coercive measures.

1810. being introduced than had been sanctioned by the Act of 1807:—

"It is now three years," he observes, "since that abominable traffic ceased to be sanctioned by the Law of the land; and I thank God I may therefore now indulge in expressing feelings towards it which delicacy, rather to the law than the traffic, might before that period have rendered it proper to suppress. After a long and most unaccountable silence of the law on this head, which seemed to protect, by permitting, or at least by not prohibiting the traffic, it has now spoken out, and the veil which it has appeared to interpose being now withdrawn, it is fit to let our indignation fall on those who still dare to trade in human flesh, not merely for the frauds of common smugglers, but for engaging in crimes of the deepest dye; in crimes always most iniquitous, even when not illegal; but which now are as contrary to law as they have ever been to honesty and justice. I must protest loudly against the abuse of language which allows such men to call themselves traders or merchants. It is not commerce, but crime that they are driving. I too well know, and too highly respect, that most honorable and useful pursuit, that commerce whose province it is to humanize and pacify the world—so alien in its nature to violence and fraud—so formed to flourish in peace and in honesty—so inseparably connected with freedom, and good will, and fair dealing,—I deem too highly of it to endure that its name should, by a strange perversion, be prostituted to the use of men who live by treachery, rapine, torture, and murder, and are habitually practising the worst of crimes for the basest of purposes. When I say murder, I speak literally and advisedly. I mean to use no figurative phrase; and I know I am guilty of no exaggeration. I am speaking of the worst form of that crime. For ordinary murders there may even be some excuse. Revenge may have arisen from the excess of feelings honourable in themselves. A murder of hatred, or cruelty, or mere bloodthirstiness, can only be imputed to a deprivation of reason. But here we have to do with cool, deliberate, mercenary murder, nay, worse than this; for the ruffians who go on the highway, or the pirates who infest the seas, at least expose their persons, and, by their courage, throw a kind of false glare over their crimes. But these wretches dare not do

Eloquent passage in his speech upon the enormities of the traffic.

this. They employ others as base as themselves, only that they are less cowardly; they set on men to rob and kill, in whose spoils they are willing to share, though not in their dangers. Traders, or merchants do they presume to call themselves! and in cities like London and Liverpool, the very creations of honest trade? I will give them the right name at length, and call them cowardly suborners of piracy and mercenary murder! Seeing this determination, on the part of these infamous persons, to elude the Abolition Act, it is natural for me to ask, before I conclude, whether any means can be devised for its more effectual execution."—*Speeches*, vol. 2, pp. 33, 34. Ed. 1838. Ridgway. 1810.

After proceeding to remark that the cruisers employed on the coast of Africa to prevent or interrupt the traffic, were not sufficiently numerous, and that the craft should be of a light construction, so as to be able to penetrate into the creeks and rivers, he thus continues:—

"But I should not do justice either to my own sentiments, or to the great cause which I am maintaining, were I to stop here. All the measures I have mentioned are mere experiments—mere makeshifts and palliatives, compared with the real and effectual remedy for this grand evil, which I have no hesitation in saying it is now full time to apply. I should, indeed, have been inclined to call the idea of stopping such a traffic by pecuniary penalties, an absurdity and inconsistency, had it not been adopted by Parliament, and were I not persuaded that in such cases it is necessary to go on by steps, and often to do what we can, rather than attempt what we wish. Nevertheless, I must say, after the trial that has been given to the abolition law, I am now prepared to go much further, and to declare that the slave trade should at once be made felony."—*Speeches*, vol. 2, pp. 35, 36.

Address to the Crown unanimously carried.

The motion for an address to the Crown was unanimously carried, and was as follows:—

"That an humble address be presented to his Majesty, representing to his Majesty that this House has taken into

1810. its serious consideration the papers which his Majesty was graciously pleased to be caused to be laid before this House upon the subject of the African Slave Trade. That while this House acknowledges with gratitude the endeavours which his Majesty has been pleased to use, in compliance with the wishes of Parliament, to induce foreign nations to concur in relinquishing that disgraceful commerce, this House has to express its deep regret that those efforts have been attended with so little success. That this House does most earnestly beseech his Majesty to persevere in those measures which may tend to induce his allies, and such other foreign states as he may be able to negociate with, to co-operate with this country in a general abolition of the slave trade, and to concur in the adoption of such measures as may assist in the effectual execution of the laws already passed for that purpose. That this House has learnt with the greatest surprise and indignation that certain persons in this country have not scrupled to continue in a clandestine and fraudulent manner the detestable traffic in Slaves. And that this House does most humbly pray his Majesty that he will be graciously pleased to cause to be given to the commanders of his Majesty's ships and vessels of war, the officers of his Majesty's customs, and the other persons in his Majesty's service, whose situation enables them to detect and suppress these abuses, such orders as may effectually check practices equally contemptuous to the authority of Parliament, and derogatory to the interests and the honour of the country."—*Speeches*, vol. 9, pp. 38, 39.

Bill for making the slave trade felony, introduced and carried in 1811.

Mr. Brougham followed up this address by a Bill introduced into the House of Commons in the following year, declaring it felony on the part of his Majesty's subjects residing in the United Kingdom, or in any part of the dominions subject to the British Crown, to carry on or be engaged in the slave trade, such offenders being made liable to transportation for fourteen years, or to imprisonment with hard labour for a period not exceeding five or less than three years. This Bill became law on the 14th May, 1811.

1811.

It is the first statute in order of time which the country owes to Lord Brougham, and stands by an honourable pre-eminence at the head of the list of his Acts and Bills.*

He defends Drakard for libel, at Lincoln.

In the course of the same year he was retained at the Lincoln Spring Assizes as counsel for Drakard, the Editor of the *Stamford News*, charged with a libel upon the government for having inserted in his journal a letter condemning the system of flogging in the army. The same letter had been copied into the columns of the *Examiner*, of which Messrs. Hunt were proprietors. A prosecution had been instituted by Sir Vicary Gibbs, then Attorney General, against the Hunts; the trial had taken place before Lord Ellenborough; an acquittal had been the result, mainly attributable to the eloquence and energy of Brougham, who was counsel for the defendants. In his defence of Drakard he exerted himself with no less zeal. His speech upon that occasion is considered to have been among the best he ever delivered. It was frequently interrupted by outbursts of applause, which it was found impossible to repress. After holding up to abhorrence the despotic conduct of the Emperor of France, and pointing out that the safety of a government which gags public opinion, through fettering the press, can only rest upon darkness and the terror which accompanies it, he reverts with pride to the blessings of our own freedom. "Happily, Gentlemen, things in this country are a little different. Our

Advocates the full freedom of the press.

* Slave Trade Felony Act, 51 Geo. 3, cap. 23. 1811.

1812. Constitution is bottomed in law and in justice, and in the great and deep foundation of universal Liberty! It may, therefore, claim inquiry. Our establishments thrive in open day; they even thrive, surrounded and assailed by the clamour of faction. Our rulers may continue to discharge their several duties, and to regulate the affairs of the state, while their ears are dinned with tumult. They have nothing to fear from the inquiries of men. Let the public discuss—so much the better. Even uproar, Gentlemen, is wholesome in England, while a whisper is fatal in France!"

Drakard is found guilty.

Notwithstanding the powerful appeal made to the jury on behalf of Drakard, they returned a verdict of guilty. These two trials are particularly alluded to, out of the many in which Mr. Brougham was engaged, as in consequence of them his attention was especially drawn to the law of Libel in the case of public prosecutions and the injustice it frequently occasioned. In 1812 he again defended the Hunts for a libel of a very gross nature published in the *Examiner* upon the private character of the Prince Regent. In this case the defendants were properly convicted and punished.

He is defeated at Liverpool in 1812, and remains out of Parliament till 1816.

Mr. Brougham, however, was prevented for some time from introducing any measure having for its object the removal of the defects which he considered as inherent in the existing law of Libel. In 1812, at the election for Liverpool, he was defeated by Mr. Canning and General Gascoyne, and was afterwards unsuccessful in a contest for the Inverkeithing boroughs. He therefore remained out of Parliament till 1816, when he was returned for Winchelsea, and on the 8th of May in that year introduced his Bill to

amend the law of Libel, as well as for the better security of the Liberty of the Press.* 1817.

Mr. Brougham, finding the Bill met with little encouragement, withdrew it. It was not again introduced until December, 1830, when, amidst the excitement of more absorbing political questions, it was unattended to and soon laid aside.

Bill for securing the Liberty of the Press.

In 1817 his memorable labours in the important cause of Education commenced. During the Ministry of Mr. Percival Mr. Whitbread had brought forward the subject, but had not met with much encouragement from the Premier, who suggested that before any Parliamentary discussion should take place upon it, a Commission should be appointed to examine the state of Charitable Foundations and other Institutions for educating the Poor. After Whitbread's lamented death, Brougham gave himself earnestly to a question so congenial to his generous temperament and feelings. He lost no time in submitting it to the consideration of the House. On the 21st of May he obtained the appointment of a Committee to inquire into the subject of Education, and to report their opinion thereon.

Appointment of a Committee of the House of Commons, 1817.

This committee, however, confined its inquiries to the state of education among the lower orders of the metropolis, and its chairman Mr. Brougham brought up the Report on the 20th of June following. This document exposed many defects and abuses in the administration of charitable funds. In the session of 1818 he obtained the appointment of a Committee on

* Bill for securing the Liberty of the Press. 1816.

1818.

the same subject with more extensive powers than that conferred on the one of the previous year, and during the progress of its sittings introduced his Bill for the appointment of paid Commissioners to investigate and control Charities, and generally to promote and advance the Education of the poor. The Bill was committed *pro formâ* on the 27th of April, and on the 8th of May he entered into a full explanation of its objects and details. After fully explaining these he proceeded to reply to the objections made by those who asserted that an easy remedy in the case of acknowledged abuses was afforded by application to the Court of Chancery, a tribunal with which that described by the heathen poet, and only one degree less formidable, would not at that time have borne an unjust comparison:

Another Committee appointed in the following year.

Bill on Education, introduced on 27th April, and committed *pro forma*.

> Facilis descensus Averni
> Sed revocare gradum, superasque evadere ad auras,
> Hic labor, hoc opus est.

and thus concluded his speech:—

Conclusion of his speech on Education and public Charities.

"It is impossible for me to close these remarks without expressing the extraordinary gratification which I feel, in observing how amply the poor of this country have, in all ages, been endowed by the pious munificence of individuals. It is with unspeakable delight that I contemplate the rich gifts that have been bestowed—the honest zeal displayed, by private persons, for the benefit of their fellow-creatures. When we inquire from whence proceeded those magnificent endowments, we generally find that it is not from the public policy, nor the bounty of those who, in their day, possessing princely revenues, were anxious to devote a portion of them for the benefit of mankind—not from those who, having amassed vast fortunes by public employment, were desirous to repay, in charity, a little of what they had thus levied upon the state. It is far more frequently some obscure personage—some tradesman of humble birth—who, grateful

for the Education which had enabled him to acquire his wealth through honest industry, turned a portion of it from the claims of nearer connexions to enable other helpless creatures, in circumstances like his own, to meet the struggles he himself has undergone. In the history of this country, public or domestic, I know of no feature more touching than this, unless, perhaps, it be the yet more affecting sight of those who, every day, before our eyes, are seen devoting their fortunes, their time, their labour, their health, to offices of benevolence and mercy. How many persons do I myself know, to whom it is only necessary to say—"there are men without employment—children uneducated—sufferers in prison—victims of disease—wretches pining in want"—and straightway they will abandon all other pursuits, as if they themselves had not large families to provide for; and toil for days, and for nights, stolen from their own most necessary avocations, to feed the hungry, clothe the naked, and shed upon the children of the poor that inestimable blessing of Education which alone gave themselves the wish and the power to relieve their fellow men! I survey this picture with inexpressible pleasure, and the rather because it is a glory peculiar to England. She has the more cause to be proud of it, that it is the legitimate fruit of her free constitution. Where tyrants bear sway, palaces may arise to lodge the poor; and hospitals may be the most magnificent ornaments of the Seat of Power. But, though fair to the eye, and useful to some classes, their foundations are laid in the sufferings of others. They are supported, not by private beneficence, which renders a pleasure to the giver, as well as a comfort to him who receives; but by the hard-won earnings of the poor, wrung from their wants, and, frequently, by the preposterous imposts laid upon their vices. While the Rulers of any People withhold from them the enjoyment of their most sacred rights—a voice in the management of their own affairs — they must continue strangers to those noble sentiments—that honest elevation of purpose, which distinguishes freemen, teaches them to look beyond the sphere of personal interest, makes their hearts beat high, and stretches out their arms for the glory and the advantage of their country. There is no more degrading effect of Despotism, than that it limits the charitable feelings of our nature, rendering men suspicious and selfish, and forgetful that they have a Country. Happily

1818.

1818.

for England, she has still a people capable of higher things; but I have been led away from my purpose, which was only to express my admiration of those humane individuals, whose conduct I have so long witnessed—of whom if I have spoken very warmly, it is because I feel much more for them than I can describe—and whose deserts are, indeed, far far above any praise that language can bestow."—*Harwood's Memoirs of Lord Brougham*, pp. 124, 125, 126.

The Bill is restricted in the House of Lords, and receives the Royal Assent, 10th June, 1818.

The Bill passed the Commons and was much restricted and modified in the Lords, where the labours of the Commission about to be appointed were confined to inquire into Charities connected with Education. It received the Royal Assent on the 10th June, 1818, and is the statute 58 Geo. 3, c. 91.* Notwithstanding the labours and zeal of Mr. Brougham, his name was omitted from the Commission. In the following year the inquiries of the committee were extended to all Charities of every description by the statute 59 Geo. 3, c. 81, save only that those relating to the Universities and Public Schools, which had been specially omitted from the former Act, were also excluded from this.† At the close of the year 1818, Mr. Brougham published his letter to Sir Samuel Romilly on the Abuses of Charities, with an appendix, containing minutes of evidence taken before the Education Committee. The eminent lawyer and statesman to whom this letter was addressed, received it while attending the sick bed of Lady Romilly, whose loss

His name is left out of the Commission.

His letter to Sir S. Romilly on the Abuses of Charities.

* Act for appointing Commissioners to inquire concerning Charities in England for the Education of the Poor. 1818.

† Act to amend the stat. 58 Geo. 3, cap. 91, and for the further extension thereof to other Charities in England and Wales. 59 Geo. 3, cap. 81. 6 July, 1819.

shortly afterwards occasioned a fatal cloud to pass over those bright intellectual faculties which had beamed only for the happiness and amelioration of mankind. This letter although it described very forcibly the details of many abuses in the administration of charitable funds, and exposed the difficulties which the Committee had encountered through the lukewarm co-operation of the Government, was supposed by Romilly to be little likely to excite the interest of the public. It nevertheless ran through ten large editions in a very short time. 1820.

It passes through ten large editions.

The interesting and important events which followed the death of George the Third in 1820, while they engrossed the attention of Mr. Brougham, and gave him a far more prominent position as an advocate and political leader than he had hitherto attained, somewhat interrupted the course of his labours in the preparation of measures, having for their object social or legal improvement. Nevertheless, soon after the new Parliament met, having been again returned for Winchelsea, he moved on the 28th June for leave to bring in a Bill for the better Education of the Poor in England and Wales. Lord Castlereagh acquiescing in the motion, the Bill* was brought in on the 11th July, and gave rise to very great discussion throughout the country, it being the first system of National Education ever proposed. The advantages and influences which it placed in the hands of the clergy of the Established Church, as regarded the religious instruction

Great opposition on the part of the Dissenters.

* Bill for better providing the means of Education for his Majesty's subjects. (Parish School Bill.) 1820.

1823. to be given to the pupils; the selection and appointment of the masters, and the general control and management of the schools, caused the most violent opposition to the measure on the part of the Dissenters, and Mr. Brougham, seeing that success was hopeless, withdrew it before the end of the session. He had incurred much unpopularity among that body from the candour and boldness with which, in his speech, he had designated the clergy of the Church of England as the most proper and natural guardians of the Education of the Poor. "Those," said he, "who objected to his plan, ought to yield to the inestimable advantage of securing the services of such a body of men as the established clergy were, and of increasing and insuring the durability of the system, by giving it that deep root which nothing new could acquire without being grafted on old stock, and thereby participating in all the strength that had been imbibed through a long course of years, during which that stock had flourished. A religious education was essential to the welfare of every individual, and the Church had a direct interest in promoting such a system. What then could be more natural than that the Clergy should have a control over those who were selected to assist it? And as far as individual merit was to have any weight in such a discussion, the zeal and alacrity which the established clergy had manifested in procuring for him the necessary information, and the warm hearted interest which they took in the education of the poor, entitled them to all confidence, and pointed them out as the persons destined by Providence to assist in that great work."—*Har-*

The Bill is withdrawn.

He upholds the influence and authority of the Established Church.

wood's Memoirs of Lord Brougham, 1840, pp. 161, 162. 1823.

In conjunction with Dr. Birkbeck he founds the London Mechanics' Institution, 1823.

In 1823, Mr. Brougham assisted Dr. Birkbeck in the establishment of the London Mechanics' Institution, which may be said to be the parent of those now to be found in every part of the country. In order to draw attention to its objects and usefulness, he addressed a letter to the working classes and their employers, styled "Practical Observations upon the Education of the People,"* in which the advantages of cheap literature and of the combination of instructive with entertaining knowledge, were discussed. This publication was very extensively read, passing through twenty editions, and contributed more than any thing else to the general adoption of the system. A Society was subsequently formed under the Presidency of Mr. Brougham for the purpose of publishing, in a cheap and portable form, the best English Authors.

* *Speeches*, Ed. 1838, vol. 3, p. 103.

CHAPTER II.

Mr. Brougham is appointed Lord Rector of Glasgow University—Extract from his Inaugural Address—He attacks the Abuses of the Court of Chancery—Sir Samuel Romilly—Prisoners' Counsel Bill, its slow success—Lord Lyndhurst becomes a convert to it in 1836—Mr. Commissioner Hill's remark on legal improvements—Mr. Brougham's celebrated Speech on Law Reform, February, 1828—Review of what had been then done—Jeremy Bentham—Sir Samuel Romilly—His untimely death—Unpublished Essays—Sir James Mackintosh—The ground becoming open is at once taken possession of by Mr. Brougham—Analysis of his Speech on Civil Procedure—Defects in the Practice of the Superior Courts—Political appointment of Judges—Anomaly of the Welsh circuits.

1825.

Gains the election by a majority of one.

His Inaugural Address.

MR. BROUGHAM'S unwearied efforts in the cause of Education met with an ample reward in 1825, when he was appointed Lord Rector of the University of Glasgow by a majority of one over his distinguished opponent Sir Walter Scott, the casting vote being given in his favour by Sir James Mackintosh. The Inaugural Address which he delivered on the occasion of his installation is one of the finest pieces of composition to be found in our language. No apology is necessary even in what purports to be a Review only of Lord Brougham's Acts and Bills, for the insertion of one or two passages of universal interest, which will always be read with advantage, as long as youthful ambition is the earnest of fame and usefulness in manhood, and as long as the error exists of imagining, that excellence in writing or in speaking can be acquired without long and arduous preparation:—

1825.

"At your enviable age," he says, addressing the assembled Students of the University, and exhorting them to seize the golden hours of the spring of youth, not for pleasure, but to lay up the riches of understanding, "at your enviable age everything has the lively interest of novelty and freshness; attention is perpetually sharpened by curiosity; and the memory is tenacious of the deep impressions it thus receives to a degree unknown in after life; while the distracting cares of the world, or its beguiling pleasures, cross not the threshold of these calm retreats; its distant noise and bustle are faintly heard, making the shelter you enjoy more grateful; and the struggles of anxious mortals embarked upon that troublous sea, are viewed from an eminence, the security of which is rendered more sweet by the prospect of the scene below. Yet a little while, and you too will be plunged into those waters of bitterness; and will cast an eye of regret, as now I do, upon the peaceful regions you have quitted for ever. Such is your lot as members of society; but it will be your own fault if you look back on this place with repentance or shame; and be well assured that, whatever time—aye, every hour—you squander here on unprofitable idling, will then rise up against you, and be paid for by years of bitter but unavailing regrets. Study, then, I beseech you, so to store your minds with the exquisite learning of former ages, that you may always possess within yourselves sources of rational and refined enjoyment, which will enable you to set at nought the grosser pleasures, of sense, whereunto other men are slaves; and so imbue yourselves with the sound Philosophy of later days, forming yourselves to the virtuous habits which are its legitimate offspring, that you may walk unhurt through the trials which await you, and may look down upon the ignorance and error that surround you, not with lofty and supercilious contempt, as the sages of old time, but with the vehement desire of enlightening those who wander in darkness, and who are by so much the more endeared to us by how much they want our assistance.

Advantages of a careful study of the classics.

"It is an extremely common error among young persons impatient of Academical discipline, to turn from the painful study of ancient, and particularly of Attic composition, and solace themselves with works rendered easy by the familiarity of their own tongue. They plausibly contend, that as powerful or captivating diction in a pure English style is,

How excellence in composition, whether written or spoken, is only to be attained.

1825. after all, the attainment they are in search of, the study of the best English models affords the shortest road to this point; and even admtiting the ancient examples to have been the great fountains from which all eloquence is drawn, they would rather profit, as it were, by the Classical labours of their English predecessors, than toil over the same path themselves. In a word, they would treat the perishable result of those labours as the standard, and give themselves no care about the immortal originals. This argument, the thin covering which indolence weaves for herself, would speedily sink all the Fine Arts into barrenness and insignificance. Why, according to such reasoners, should a Sculptor or Painter encounter the toil of a journey to Athens or to Rome? Far better work at home, and profit by the labour of those who have resorted to the Vatican and the Parthenon, and founded an English school, adapted to the taste of our own country. Be you assured that the works of the English chisel fall not more short of the wonders of Acropolis, than the best productions of modern pens fall short of the chaste, finished, nervous, and overwhelming compositions of them that 'resistless fulmined over Greece.' Be equally sure that, with hardly any exception, the great things of Poetry and of Eloquence have been done by men who cultivated mighty exemplars of Athenian Genius with daily and with nightly devotions."—*Speeches*, Ed. 1838, vol. 3, pp. 74, 75.

Public dinner at Edinburgh.

The same year which witnessed the splendid reception given to Brougham at Glasgow on the occasion of his Installation as Lord Rector, and at the Public Dinner at Edinburgh, afforded also ample evidence that these testimonials of the approbation of his fellow-citizens, did not avert his mind for a moment from the steady pursuit of objects of general utility, having no relation whatever to his own personal aggrandizement. Both in 1824 and 1825, and again in 1826, he drew the attention of the Legislature to the delays and defects in the administration of Justice existing in the Court of Chancery, and in the Law of Real

1824 to 1836.

Property. Even Romilly, than whom no one knew those defects better, and who had an influence in Parliament even greater than that of Brougham, had shrunk from an attempt to drag to light, so powerful were their champions, the abuses and iniquities of that Court. Year after year, on the contrary, did Brougham fearlessly reiterate his attacks, he growing stronger, and his opponents weaker, until the work of reformation became easier in his own hands, and the novel spectacle arose, of a Lord Chancellor's first act being to diminish his own emoluments and curtail his own immense patronage.

Sir Samuel Romilly's efforts contrasted with those of Lord Brougham.

The year 1824 is memorable in the annals of jurisprudence, as being the first in which an effort was made to procure for prisoners the full advantage of counsel. Up to that period the anomaly had existed of advocates being allowed to address the jury on behalf of persons charged with treason and misdemeanor—but in cases of felony the sole privilege allowed to prisoners was, to be able to retain counsel for the examination and cross-examination of witnesses, and for the arguing of any points of law which should arise in the progress of the trial. Even Blackstone, whose language upon the character of our Laws is almost universally one of panegyric, condemns this rule as unjust: "It seems," he says, "to be not at all of a piece with the rest of the humane treatment of prisoners by the English law—for upon what face of reason can that assistance be denied to save the life of a man which is yet allowed him in prosecutions for every petty trespass?"—*Comm.* vol. 4, p. 355.

Prisoners' counsel bill.

The subject was introduced into the House of Com- Introduced in

1834. mons in 1824 by Mr. George Lamb, brother of the late Lord Melbourne, but on a division his motion was rejected by a majority of 30, being opposed by Lord Lyndhurst, at that time Attorney General, although it was supported by Mr. Denman and Sir J. Mackintosh. Mr. Brougham spoke in favour of the measure when again brought forward by Mr. Lamb in 1826, but it was on this occasion defeated by a majority of 69. Nothing was done in the matter till 1834, when the Prisoners' Counsel Bill, introduced by Mr. Ewart, passed without a division, but did not reach the Lords. In 1835 it was again debated in the House of Commons during its several stages, and divisions took place upon it, but it ultimately passed by a small majority. On this occasion again it did not reach the Lords. In 1836, Mr. Ewart a third time persevered with the measure, and received the support of Lord Campbell, then Attorney General, who had also spoken in its favour in 1835; the second reading was carried by a majority of 144, and the Bill soon afterwards went to the Upper House. Here Lord Lyndhurst, who had so frequently opposed it on its first introduction into the Commons, with a candour that did him honour, avowed the change which had taken place in his sentiments respecting it. After giving a short history of the measure, after making allusion to the elaborate report made upon the subject, and in favour of the proposal by the Commissioners of Criminal Law, and after mentioning the doubts formerly expressed by that eminent Judge Sir Michael Foster respecting the policy of allowing counsel to address juries in cases of felony, he proceeds to say:—"My

1824 by Mr. George Lamb.

1836.

Conversion of Lord Lyndhurst.

Portion of his speech.

1836.

Lords, I admit the authority, and even the doubts of that learned Judge, to be entitled to great attention; and it was partly in consequence of these doubts, that after examining what might in my mind be the evils likely to arise from a change of system, I on a former occasion opposed a measure of this description when introduced into the other House. But, my Lords, I have since had reason to observe the progress of Public Opinion on the subject; I made inquiries respecting it, while at the Bar. I have, when on the Bench, watched the progress, and seen the working of the system, and the result has been, to produce a conviction in my mind that the evils and inconveniences of allowing counsel to prisoners have been greatly exaggerated, and ought not to be put for a moment in competition with that which the obvious justice of the case so clearly demands." When Lord Lyndhurst spoke these words, there was no longer any opposition to the measure—even the fears formerly entertained that the eloquence or ingenuity of advocates would occasion a failure of Justice, or indefinitely protract the trials of prisoners, had long since subsided: yet it must be recollected that twelve years had passed away from the first introduction of a measure, now universally acknowledged to be just and necessary, until it ultimately became law by the 6 & 7 Wm. 4, c. 114. So slowly do we abandon a faulty precedent when sanctioned by antiquity; so fearful are men, even of the most exalted intellect, to differ from those from whom they have been accustomed to derive the maxims and science of their profession, and so unwilling do they seem to judge of a question of principle strictly and

Prisoners' counsel Act, 6 & 7 Wm. 4, c. 114.

1828.

entirely on its own merits. The history of the Prisoners' Counsel Bill is the history of many of the measures introduced by Lord Brougham. Designated at first as ill-suited and uncongenial to our system, they roused the vehement opposition of minds impressed with the idea that a departure from established practice could not consist with improvement, and forgetful, that experience is valueless unless it furnishes us with the power of perfecting the future, by a contemplation of the imperfections of the past. "My experience through life has been," observes Mr. Hill, the enlightened Recorder of Birmingham, in his valuable work lately published on the Repression of Crime, "that if a sound theory be honestly reduced to practice, fewer difficulties will arise than the fear of innovation would lead us to expect; and that when such difficulties do present themselves, surrounding circumstances will suggest the means of overcoming or avoiding them."—*Sequel to Charge of July*, 1839. *The Repression of Crime*, p. 41.

Similar fate of many of Lord Brougham's measures.

We pass over the interval occurring after the dissolution of Parliament, which took place in 1826, when Mr. Brougham was a fourth time returned for Winchelsea, to the year 1828, which constitutes a most important epoch in his Legislative career. His history, as a most zealous and active Law Reformer, may be properly said to date from this period. On the 7th February, 1828, he introduced the subject, in a speech which lasted six hours; and notwithstanding the barren and unattractive nature of the subject, commanded the earnest and unremitting attention of the House. At that period the writings of Bentham, the first as well

7th Feb. 1828.

Jeremy Bentham, the father of Law Reform.

1828.

as the greatest of legal philosophers, had successfully exposed the inconsistencies and imperfections of the system of English jurisprudence. Breaking away from blind subservience to established precedents and authority, Bentham traced the laws to their first principles and weighed them in the scale of Reason, examining how far they were adapted to the changes of civil society, or were calculated to promote, what is the aim and object of all Law, the well being and happiness of the State, by repressing crime and holding out encouragement to Probity and Virtue. In the hands of such a master, Jurisprudence—hitherto a labyrinth of complicated and artificial details—of doctrines absurd and irrational, because the circumstances under which they had taken root and grown up no longer existed,—became a Science, beautiful and symmetrical in all its proportions; while with wonderful industry and perseverance he applied himself to the more practical and minute portions of his subject, and, no less boldly and skilfully than Bacon had done in moral philosophy, made facts the pillar of each hypothesis. It was an honour to Romilly to be the pupil and friend of such a man. It was fortunate for Bentham to have imbued with his spirit and his wisdom, one so disinterested in character, so noble in disposition, so expansive in intellect, so pure in patriotism as Romilly. From the period when the latter entered Parliament as Solicitor General, in 1806, to his lamented death in 1818, his most zealous efforts were directed towards the improvement of our laws, more especially the reformation of our Criminal Code. At the present day we regard with astonishment the difficult struggle he had to

Sir Samuel Romilly the pupil of Bentham.

Reformation of our Criminal Code.

1828.

make in 1808, to procure the abolition of capital punishment in cases of privately stealing from the person, and we should be disposed to smile at the arguments used by Lord Ellenborough to defeat the measure, did we not remember that, as a Lawyer, he adorned the Judgment Seat since so ably filled by Tenterden, Denman and Campbell. Nevertheless, if Sir Samuel Romilly did not die too soon for his own fame, to which his advancement to the highest political and professional honours could scarcely have added, yet his Country at all events has ample reason to lament his premature end, when we consider how vast and comprehensive were his plans for the Improvement of the Law, and how little he was able to accomplish. Among the papers which he left to his executors, were many unfinished Essays on many branches of our Jurisprudence, in which his acute and accomplished mind had perceived defects, and which he had hoped for opportunities to remedy. The Law Reformer feels a melancholy interest in reading over the list of these Essays, detailed in the 3rd volume of his Memoirs. The publication of them was withheld by Romilly's executors, partly because of their fragmentary and imperfect character and partly because the alterations in the law proposed by many of them were considered to consist of innovations of too vast and sweeping a character to admit of there being a hope that they could ever be adopted: yet we have lived to see many of these very innovations recognised as in complete harmony with sound principles and common sense, and furnishing the most valuable tribute to the foresight and sagacity

Lord Ellenborough's opposition.

List of Essays in Sir Samuel Romilly's Memoirs.

of their proposer.* Take courage, then, Reformer of the Law, from the mortifications and defeats sustained, first by Romilly and afterwards by Brougham! Abuses and absurdities may flourish for a while, protected by interest, and fed by prejudice; but Public Opinion, a plant of slow growth even in the generous soil of freedom, will ultimately crown your labours with a rich and joyful ingathering of harvest. 1828.

Romilly followed by Sir James Mackintosh.

The void made by the death of Romilly was, to a certain extent, filled up by an individual of great capacity and extensive acquirements, who had lately returned from India, where he had filled a high judicial office with credit and distinction, and who was soon afterwards returned to Parliament for Knaresborough.

In many respects the mind of Mackintosh eminently qualified him for being the advocate of the modifications of the criminal law which Romilly had proposed. Equally humane, enlightened and philosophical with Romilly, he fell far short of him however in vigour, boldness, and perseverance in pursuing the objects he had in view. Never of a very strong constitution, his physical energies had been still further enfeebled by the enervating effects of Indian climate, while his kindness and gentleness of disposition amounted almost to sensibility, and he shrank from giving offence, even where there was a necessity for it in order to ensure the success of measures, which he had most at heart.

Character of Mackintosh.

* The writer, on application to the distinguished individual now at the head of Sir Samuel Romilly's family, for permission to insert these Essays in the present publication, received a refusal couched in courteous terms on the ground that it was intended to publish them in a Supplemental Volume of his Memoirs.

1828. Hence it was that, with the best wishes to further the cause of Law Reform, he did little really to advance it. The style of his Speeches, although occasionally high and impassioned, was too didactic and even for a popular Assembly. His manner was heavy and unexcitable; it was the "*temperatum dicendi genus*," well adapted for the chair of a University or the Lectureship of a learned Society, but not at all calculated to rouse the feelings, to rivet the attention, or to ravish the judgment of a British House of Commons. When accordingly Mr. Brougham, after having almost annually adverted in Parliament to the defects of the Court of Chancery, seized, in 1827, the subject of Law Reform, then growing fast ripe for Legislation, he made that subject at once and pre-eminently his own.

His style of eloquence.

Already had a Commission of Inquiry into that department of jurisprudence been appointed, under the auspices of Mr. Williams, afterwards a Justice of the King's Bench; the Consolidation of the Criminal Law had been committed to the management of the late Sir Robert Peel, then Secretary of State for the Home Department; but although many valuable improvements were the result, and although the Chancery Commission had made its Report, the Government did not seem disposed to embark upon any general scheme for the amendment of the Law. Mr. Brougham took advantage of this crisis to move for a Commission of Inquiry into the whole subject, more especially that portion of it relating to Civil Procedure. The speech of the 7th February, 1828, which will frequently be alluded to in the following pages, as the "Statement" of that year, was the prelude to the resolutions he then moved.

Mr. Justice Williams.

Report of the Chancery Commission.

Speech on Civil Procedure, 7th Feb.

After adverting to those branches of the Law which would find no place in his observations, and assigning as the reason for such omission that Equity, Criminal Law, and the Law of Real Property had already engaged the attention of individuals eminent in their profession, or having advantages by reason of their official position, he declared his intention of bringing the whole law as administered in the courts of justice under the review of the House, and thus described the magnitude and momentous character of the task he had undertaken :— 1828.

Character of the task undertaken.

"I shall not enlarge, after the manner of some, on the infinite importance and high interest which belong to the question, and the attention which it, of right, claims from us, whether we be considered as a branch of the Government, or as the representatives of the People, or as part of the People ourselves. It would be wholly superfluous, for every one must at once admit, that if we view the whole establishments of the country, the Government, by the King, and the other estates of the realm ; the entire system of administration, whether civil or military ; the vast establishments of land and of naval force by which the State is defended; our foreign negotiations, intended to preserve Peace with the world ; our domestic arrangements necessary to make the Government respected by the People, or our fiscal regulations by which the whole is to be supported, all shrink into nothing, when compared with the pure and prompt and cheap administration of justice throughout the community. I will indeed make no such comparison : I will not put or contrast things so inseparably connected: for all the Establishments formed by our ancestors and supported by their descendants were invented and are chiefly maintained, in order that justice may be duly administered between man and man. And in my mind he was guilty of no error, he was chargeable with no exaggeration, he was betrayed by his fancy into no metaphor, who once said that all we see about us, King, Lords, and Commons, the whole machinery of the State, all the apparatus of the system and its varied workings, end in simply bringing twelve good

Excellency of trial by jury.

1828. men into a box. Such, the Administration of Justice, is the cause of the establishment of Government—such is the use of Government; it is this purpose which can alone justify restraints upon Natural Liberty; it is this alone which can excuse the constant interference with the rights and the property of men. I invite you then, Sir, to enter upon an unsparing examination of this weighty subject: I invite the House to proceed with me, first of all, into the different Courts, to mark what failures in practice are to be found in the system as it was originally framed, as well as what errors time has engendered by occasioning a departure from that system, and afterwards to consider whether we may not safely and usefully apply to these defects remedies of a seasonable and temperate nature, restoring what is decayed if it be good, lopping off what experience has proved to be pernicious."—*Speeches*, vol. 2, pp. 323, 324.

Original jurisdiction of the Court of King's Bench.

Conducting his hearers first of all into the Court of King's Bench, he points out how, by a departure from its original jurisdiction, confined to Pleas of the Crown, it had extended its cognizance to all personal actions by one of those fictions* of which Law so conversant with facts, is strangely enamoured, and had thus engrossed a very great proportion of the most important business of Westminster Hall to the disparagement of the other Courts. The remedies which had been from time to time proposed to relieve the court from this undue pressure had hitherto failed of their effect. In 1821 the experiment of a double court was tried, the Lord Chief Justice presiding in one, and a Puisne Judge in the other, but the Court of the latter was almost idle, while that of the former continued as overloaded as before; that experiment

Defects in practice.

* That every person sued is in custody of the marshal of the Court of King's Bench, and can thus be sued in that Court for all personal actions.

1828.

having failed, a double court of a different character and constitution was attempted. In the full Court the Lord Chief Justice presided with a large attendance of the public, counsel and attorneys, to transact business of a technical and formal nature; while in a smaller and inferior court three Judges sat to hear and decide questions of the greatest legal nicety and importance. Mr. Brougham drew attention to the inconsistency of this practice, and also to another no less inconvenient, viz. that of the Judges each leaving the Court in rotation during the day in order to pass a certain number of hours at chambers. Much time was necessarily lost by this method of procedure, as well as by that of the Judge taking his seat on the Bench frequently very much later than the time appointed for the sittings, in consequence of his having to take bail in the Bail Court. Both these defects have since been remedied, the former by the same Judge throughout the term presiding at chambers for the entire day, and the latter by a Puisne Judge in rotation despatching the whole of the business in the Bail Court, while the full Court is sitting.

Defects in practice and sittings of the Superior Courts.

The number of the Judges next forms the subject of Mr. Brougham's remarks, and he points out the absurdity of adhering to the number of twelve, because twelve had sufficed to despatch, two or three centuries before, not a tenth part of the business which had now to be transacted. He proposed to augment the number of Judges from twelve to fourteen, and at the same time to abolish the Welsh circuits. The Legislature afterwards adopted the latter suggestion and appointed three additional Judges instead of two. The observa-

Number of the Judges.

Welsh circuits.

1828. tions of Mr. Brougham on the subject of the unwillingness which existed as to altering the number of the Judges apply to all amendments of the Law.

"There is a far more unthinking and dangerous prejudice, to which the same topic is a complete refutation. I mean the outcry against Innovation set up as often as any one proposes those Reforms rendered necessary by the changes that time, the great Innovator, is perpetually making. *Tempus novator rerum.* Those who advise an increase of the Judges beyond their present number are not innovators. The innovators are in truth those who would stand still while the world is going forward; who would only employ the same number of labourers while the harvest has increased tenfold; who, adhering to the ancient system of having but twelve Judges, although the work for them to do has incalculably increased, refuse to maintain the original equality, the pristine fitness of the means to the end, the old efficiency and adequacy of the establishment: but they are not innovators who would apply additional power when the pressure exceeds all former bounds, who when the labour is changed would alter the force of workmen employed, and thus preserve the proportions that originally existed in the Judicial System; who would most literally keep things as they were or return them to their primitive state by restoring and perpetuating their former adaptation and harmony."—*Speeches*, vol. 2, p. 337.

Payment of the Judges.

The following suggestions respecting the allowance of a certain amount of fees to the Judges of the Superior Courts, in addition to their fixed salaries, and the argument adduced in support of the proposal, may be profitably perused by those who consider they are advancing the interests of Justice by retaining as low as possible the salaries of Judges of the Local Courts:—

"I highly approve of paying those learned persons by salaries and not by fees, as a general principle; but so long as it is the practice not to promote the Judges, which I

deem essential to the independence of the Bench, and so long as the door is closed to all ambition, so long must we find a tendency in them, as in all men arrived at their resting place, to become less strenuous in their exertions, than they would be if some little stimulus were applied to them. They have an irksome and arduous duty to perform, and, if no motive be held out to them, the consequence must be, as long as men are men, that they will have a disposition growing with their years to do as little as possible. I therefore would hold out an inducement to them to labor vigorously, by allowing them a certain moderate amount of fees—I say a very moderate amount—a very small addition to their fixed salary would operate as an incentive; and if this were thought expedient, it ought to be so ordered that such fees should not be in proportion to the length of a suit or the number of its stages, but that the amount should be fixed and defined once for all in each piece of business finally disposed of. I am quite aware that this mode of payment is not likely to meet with general support, especially with the support of the Reformers of the Law; but I give the suggestion as the result of long reflection, which has produced a leaning in my mind towards some such plan. I throw out the matter for inquiry, as the point of actual observation, and not from any fancy that I have in my own head; but, I may also mention, that some friends of the highest rank and largest experience in the profession agree with me in this point—men who are among the soundest and most zealous supporters of Reform in the Courts of Law."—*Speeches*, vol. 2, p. 340.

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Remarks applicable to the Judges of County Courts.

Passing from the question of salaries, he strongly animadverts on the custom of making the appointments of the Judges savour of a political character by taking them from the ranks of those who support the principles of the Ministry of the day.

Appointment of Judges ought not to be swayed by political influences.

"He alone ought to be selected in whom talent, integrity and experience most abound and are best united. The office of Judge is of so important and responsible a nature that one should suppose the members of Government would naturally require that they should be at liberty to make their selection from the whole field of the Profession, that

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they would themselves claim to have the whole field open to their choice. Who could believe that a Ministry would not eagerly seek to have all men before them when their object must be to choose the most able and accomplished? But although this is obvious and undeniable, and although the extension of the Minister's search cannot fail to be attended with the highest public advantage, as well as the greatest relief to him in performing his trust, is it the case that any such general and uncontrolled choice is exercised? Is all the field really open? Are there no portions of the domain excluded from the selector's authority? True, no law prevents such a search for capacity and worth! True, the doors of Westminster Hall stand open to the Minister! He may enter those gates and choose the ablest and the best man there. Be his talent what it may, be his character what it may, be his party what it may, no man to whom the offer is made will refuse to be a Judge. But there is a custom above the law—a custom, in my mind, 'more honoured in the breach than the observance,' that party, as well as merit, must be studied in these appointments." "I reprobate this mischievous system, by which the Empire loses the services of some of the ablest, the most learned, and most honest men within its bounds."—*Speeches*, vol. 2, pp. 342-345.

Honorable course adopted by Sir Robert Peel.

At the period Mr. Brougham made these remarks, Sir Robert Peel had departed from the usual practice by recommending for high Judicial Offices individuals qualified in the most eminent degree to hold them, but known to entertain views on political questions at variance with his own. It was highly to the credit of the Whig party that on their accession to power in 1830 they broke through the rule which had hitherto prevailed in England by appointing Lord Lyndhurst Chief Baron of the Court of Exchequer, thereby raising the character and swelling the business of the court, and at once removing the impression which had prevailed and had been adverted to in Mr. Brougham's speech, namely, that it was inferior to the other Courts.

1828.

Since that time, although the Chief Justiceships have almost in every case been the reward of Political support and assistance given to the Ministry, yet the Puisne Judgeships have been conferred in very many cases solely with reference to legal attainments, or to eminence acquired as an advocate. Lord Chief Justice Erle, one of the highest ornaments of the English bench, received his appointment from a Conservative Government; and Lord Cranworth, when Lord Chancellor, with an impartiality and discrimination that have done him honour, selected a Crompton, a Willes, and a Bramwell, upon the sole ground that, by the unanimous verdict of Westminster Hall, they were considered most worthy to fill the vacancies which had occurred. He took the same course in appointing to the Judgeships of the Bankruptcy and County Courts; and if he succeeded in establishing the rule that, except only in the case of the Chief Justiceships, all other legal appointments shall be henceforward bestowed only on the ground of merit, without regard to political partizanship, he has done a special benefit to the Administration of Justice, and made use of his power in a manner to entitle him to the lasting gratitude of that profession, all the members of which can labour arduously in their own calling, while few are fortunate enough to combine with that calling the advantages of a Political career, and fewer still to possess themselves of its prizes.

Lord Cranworth's appointments.

Mr. Brougham's Speech having passed on to comment upon the close character of the Court of Common Pleas, and the unfairness of the system of requiring fees in advance in that Court, defects long

Disadvantages of the Law Terms being moveable.

1828. since remedied, proceeds to dwell upon the inconveniences that had arisen from the Law Terms being moveable and changing with the several Feasts. Before doing this, however, he had more fully exposed the anomalies of the Welsh system of Circuit Judicature, upon which he had slightly touched when on the subject of the increase of the number of Judges. There was no reason, he argued, why an inferior class of men should fill these appointments, sometimes consisting of those who had left the bar, and consequently whose knowledge of its practice might naturally be supposed to have suffered some diminution, or of those who for one half the year were Barristers, and Judges for the other half. In such case, said Mr. Brougham, and the argument might well have been used in the case of County Court Judges, who are no longer permitted to practice professionally, a man is not likely to be a good Judge or a good Barrister. Another objection made to the Welsh system applies also to that at present pursued with regard to County Courts, particularly in the metropolis and in large towns, where the sittings are held on certain days in every week.

"A second and greater objection is, that the Welsh Judges never change their circuits—one of them, for instance, goes the Carmarthen circuit, another the Brecon circuit, a third the Chester circuit—but always the same circuit. And what is the inevitable consequence? Why, they become acquainted with the gentry, the magistrates, almost with the tradesmen of each district, the very witnesses who come before them, and intimately with the practitioners, whether counsel or attorneys. The names, the faces, the characters, the histories of all those persons are familiar to them; and out of this great knowledge grow likings and prejudices, which can never by any possibility

cast a shadow across the broad, pure path of Westminster Hall."—*Speeches*, vol. 2, p. 347. 1828.

Judges of the County Courts might occasionally be changed to the public advantage.

It would certainly conduce very much to the administration of justice in the Local Courts if, in those districts where there is a great pressure of business, and that of a continuous character, there should occasionally, say every three years, be a change of the presiding Judge. In addition to the objection urged by Mr Brougham, we must not forget the monotony and want of interest generally attached to the business of the County Courts, which requires a relief of this nature. The County Court Judge has at present no stimulus to exertion; he is precluded and doubtless with justice, from improving his position by professional practice; all the avenues of political ambition are closed to him; hope of promotion is at present withheld from him. Under such circumstances an occasional change of place and scene would operate to encourage and refresh him in the discharge of an arduous and oftentimes irksome duty.

Abolition of the Welsh system of judicature, and of the Court of Great Sessions, 1830.

The absurd system of Welsh judicature did not long survive the attack made upon it by Mr. Brougham. The Common Law Commissioners appointed in 1828, consequently upon his speech, having recommended its incorporation with that of England according to his suggestion, the Court of Great Sessions was abolished by the 11 Geo. 4 & 1 Wm. 4, c. 70.

Nor was he less happy in his recommendation of the alteration of the Law Terms. Among other inconveniences of the system which prevailed at that time, he alluded to the October Sittings,* whereby those Bar-

* These Sittings were soon afterwards abolished.

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"It is," he remarks, "the most foolish of vulgar errors to suppose that by how much the more you vex and harass the Professors of the Law, by so much more you benefit the Country. The fact is quite the reverse; for by these means you make inferior men, both in rank and feelings and accomplishments, alone follow that profession out of which the Judges of the land must be appointed. I should rather say that by how much the more you surround this renowned profession with difficulties and impediments, calculated only to make it eligible for persons of mere ordinary education, and mere habits of drudgery, who otherwise would find their way to employment in tradesmen's shops, or at best in merchants' counting-houses, by so much the more you close it upon men of talent and respectability, and prevent it from being the resort of genius and of liberal accomplishments."—*Speeches*, vol. 2, pp. 350, 351.

The Law Terms were fixed to commence at particular periods of the year, according to the recommendation of Mr. Brougham, by the statute 11 Geo. 4 & 1 Wm. 4, c. 70, s. 6.

CHAPTER III.

Continuation of Mr. Brougham's Speech on Law Reform, 1828—Courts of Civil Law—Admiralty and Consistorial Courts—Court of Delegates and of the Privy Council—Their defects subsequently abated or removed—Remarks on the repression of unnecessary litigation, and upon the introduction of Courts of Reconcilement—Proposal for a declaratory suit, to establish questions of title—Special Pleading, and the conduct of causes—Procedure or trial—Advantages of trial by jury—Of Grand Juries—Law of Evidence—Recommendation of parties to a cause being made witnesses—Written Evidence—Statute of Limitations—Payment of debts by Instalments recommended in the Superior Courts—Concluding observations of Mr. Brougham's Speech—Resolution for an Address to the Crown unanimously carried—Lord Brougham's career as a Law Reformer dates from this period.

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Remarks on the Courts of Civil Law, the Admiralty and Consistorial Courts.

THE Courts of Civil Law are the next subject of inquiry. The Court of Admiralty, at the period when Mr. Brougham spoke, was presided over by Lord Stowell, one of the most able and accomplished of Judges, whose salary, he remarked, was in time of peace absurdly inadequate to the position conferred upon the Judge by so high and important an office, while in time of war it was more than quadrupled by fees. "Here was a functionary dealing with the most delicate neutral questions, drawing up manifestoes, and giving opinions on those questions, and advising the Crown in matters of public policy bearing on our relations with foreign States, and subject at the same time to the bias necessarily produced by the fact of his income and consequent comfort in life hinging upon the coming on or

1828. endurance of hostilities." Another subject of comment was the patronage exercised by Archbishops and Bishops in the appointment of Judges to the Consistorial Courts, especially those of the highest order in the metropolis. These dignitaries of the Church, however eminent they might be in the discharge of the duties annexed to their exalted office, were not the most proper persons to select individuals qualified to determine grave questions of spiritual law, or testamentary and matrimonial causes. Of the Court of Delegates, to which an appeal lay from their decisions, Mr. Brougham spoke in terms of severe censure and disapprobation, saying that it was one of the worst constituted Courts ever created, and that the course of its proceedings was one of the greatest mockeries of appeal ever conceived by men. Half a dozen civilian advocates, who happened not to have been engaged in the particular cause in which the appeal lay, were added to three Judges of the Superior Courts of Common Law, and thus of themselves formed the majority of the Court. As it was most probable in so small a Bar that the most eminent Lawyers had been employed in the case, it followed that those with least practice and the fewest qualifications for the judicial office were of necessity called upon to review and pronounce upon the decisions of men of the greatest learning and experience, who had long presided in their respective Courts. Nor was the constitution of the judicature of the Privy Council much superior to that of the Court of Delegates. The momentous duties cast upon this tribunal, imported from our Colonies and Settlements in every quarter of the globe, and arising

Court of Delegates severely censured,

as also the Court of the Privy Council.

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out of the most intricate and difficult questions of law, custom and language, were frequently performed by members of the Privy Council eminent perhaps in a military, diplomatic, or political character, but neither conversant with our Colonies, nor in any way acquainted with Jurisprudence. The Judicial Sittings were held only on certain days and at some particular Feasts. In the course of his observations upon the Privy Council, Mr. Brougham took occasion to advert to the mode of administering justice in India, and urged the policy of introducing generally, as Sir Alexander Johnson had done in Ceylon, the system of trial by jury in our possessions in the East. These observations are remarkably apposite to the events of the past few years, when we have been reaping the bitter fruits of our neglect to incorporate our Dynasty with the habits and affections of the natives of the soil.

Introduction of trial by jury into Ceylon.

"Nothing," he said, "could be better calculated to conciliate the minds of the natives than allowing them to form part of the tribunals to which they are subject, and share in administering the laws under which they live. It would give them an understanding of the course of public justice and of the law by which they are ruled; a fellow-feeling with the government which executes it, and an interest in supporting the system in whose powers they participate. The effect of such a proceeding would be that in India, as in Ceylon, in the event of a Rebellion, the great mass of the people, instead of joining the revolters, would give all their support to the government. This valuable but not costly fruit of the wise policy pursued in that island, has already been gathered. In 1816, the same people which twelve years before had risen against your dynasty, were found marshalled on your side, and helping you to crush Rebellion. So will it be in the Peninsula, if you give your subjects a share in administering your laws, and an interest and a pride in supporting you. Should the day ever come when disaffection may appeal to seventy millions against a few

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thousand strangers who have planted themselves upon the ruins of their ancient Empires, you will find how much safer it is to have won their hearts, and universally cemented their attachment by a common interest in your system, than to rely upon a hundred and fifty thousand Sepoy swords, of excellent temper, but in doubtful hands." —*Speeches*, vol. 2, pp. 365, 366.

Defects in the Courts of Civil Law soon afterwards removed.

The imperfections which Mr. Brougham thus forcibly pointed out in the Civil Courts, the Court of Delegates, and the appellate judicature of the Privy Council, were shortly afterwards removed. He had the satisfaction himself, when Lord Chancellor, in 1832 and 1833, of carrying the two Acts 2 & 3 Wm. 4, c. 92,* and 3 & 4 Wm. 4, c. 41,† which abolished the Court of Delegates, and constituted a Court of Appeal, styled the Judicial Committee of the Privy Council, and presided over by four professional Judges. In 1835 the jurisdiction of this Court was extended to Patent Cases by the statute 5 & 6 Wm. 4, c. 83.‡

Offences arising out of the game laws.

After some observations upon the licensing system, the unfitness of Magistrates to adjudicate in offences respecting game, and the necessity of a more open and accessible power of appeal from cases disposed of at the Quarter Sessions, Mr. Brougham approaches the most important branch of his subject, though perhaps least interesting to the general reader, viz., the Administration of Justice in the Courts of Law. The

* Act for transferring the powers of the High Court of Delegates, both in Ecclesiastical and Maritime causes, to his Majesty in Council. 1832.

† Act for the better Administration of Justice in his Majesty's Privy Council. 1833.

‡ Act to Amend the Laws touching Letters Patent, and for Inventions. 1835.

difficulties which presented themselves immediately in this direction, arose, in a great measure, he observed, from the differences of the tenure of real property in different parts of the country, especially in manors held by Copyhold. These local peculiarities augmented, he asserted, the obstacles both to the conveyance and improvement of Landed Estates; prevented in a great degree the free circulation of property, and lessened the chance that its owner would otherwise have, of raising money upon it adequate to its value. The remedy for these inconveniences proposed by Mr. Brougham was, that an assimilation of the laws affecting real estates, all over England, should take place at the given period of twenty or thirty years from that time, so as to prevent interference with vested interests.

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Remarks on real property.

The inequalities existing between the Crown and a subject, in the trial of causes, are the next topic of animadversion; as, for example, that the Crown is not concluded by defeat in demurrer; that there is no exception, on the ground of insufficiency, to an answer filed by the Attorney General on behalf of the Crown; that in Crown causes a plaintiff cannot withdraw the record, but must be nonsuited to avoid a verdict; that in Special Jury causes, in the case of non-attendance of twelve jurors, a tales cannot be prayed without the consent of the Attorney General. After illustrating by an anecdote, within his own knowledge, the injustice frequently occasioned by the last mentioned rule, he added—

"We may talk of our excellent institutions, and excellent they certainly are, though I wish we were not given to so

1828. much Pharisaical praising of them; but if while others who do more and talk less, go on improving their Laws, we stand still and suffer all our worst abuses to continue, we shall soon cease to be respected by our neighbours, or to receive any praises save those we are so ready to lavish upon ourselves."—*Speeches*, vol. 2, p. 390.

How unnecessary Litigation may be discouraged and avoided.

Having thus, as Mr. Brougham expresses it, cleared the way for examining the proceedings in our courts of justice, he directs the attention of his audience to the means by which unnecessary Litigation may be prevented, first laying down the sound principles of Legislation applicable to the subject, and then comparing these with the provisions actually in practice.

Suggestions for checking unnecessary Litigation.

The remedies he proposes under this head are various; in the first place, the discouragement of rich and litigious suitors, by lessening the expense and delay of Legal Proceedings, and on the other hand, the frustration of groundless and vexatious Defences by greater expedition in process. Next he urged the discontinuance of all proceedings or actions which could only benefit the Court and the Practitioners, and were granted as a matter of course. A third principle was, that no party should be sent to two Courts, where one was able to afford him his full remedy; nor be obliged to come twice over to the same Court for different portions of his remedy, when he might have the whole in one proceeding.

Burden of proof should be thrown upon defendant, especially in Bills of Exchange, &c.

Another principle, no less important, was that whenever a strong presumption of right appeared on the part of a plaintiff, the burden of disputing his claim should be thrown upon the defendant. In the case of Bills of Exchange, Bonds, and other Securities, the plaintiff, Mr. Brougham asserted, should be allowed to have his judgment, upon due

notice given, unless good cause could be, in the first instance, shewn to the contrary, and security given to prosecute a suit for setting the instrument aside:— "This was a mode well known in the law of Scotland, and would put an end to all those undefended causes, which were attended with great and useless expence as well as injurious delay to the parties and the public."—*Speeches*, vol. 2, p. 391. This proposition was carried out soon afterwards in the case of Bonds, but has only very lately (1855) been extended to Bills of Exchange and Promissory Notes, and then in an imperfect manner by the 18 & 19 Vict. c. 67.* The Bill introduced in 1854 by Lord Brougham contains provisions much to be preferred on account of the greater simplicity of the Process, and the less amount of expence incurred in obtaining the Judgment. The declaratory Suit has been always a favourite one with Lord Brougham; he dwelt upon its advantages as long ago as 1828, and has several times introduced a bill upon the subject, although hitherto without success. He thus contrasts the English with the Scotch law in this particular:—

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Proposition of Mr. Brougham carried out 27 years afterwards by the 18 & 19 Vict. c. 67.

"I would suggest that in all cases where future suits are to be apprehended, proceedings might be adopted immediately to raise the question and quiet the title. The Law on this head is very different in the two parts of the Island. In England it is not possible to have the opinion of any Court until the parties are actually engaged in a lawsuit, opportunities for which may very frequently not occur until the

Advantages of the Law in Scotland in respect of the declaratory suit.

* Act to facilitate the remedies on Bills of Exchange and Promissory Notes, by the prevention of frivolous and vexatious defences to actions thereon. (Sir H. Keating's Act.) 1855.

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witnesses to prove a case may be dead, or an infant or person living abroad, and incapable of well defending his right, has come into possession. But the Scotch law furnishes a kind of action, the adoption of which may be productive of the greatest benefit, as I have more than once heard Lord Eldon hint in the House of Lords. I know very well that here we may file a Bill for perpetuating testimony, but there must be an actual vested right in the party instituting the suit, and the proceeding is besides so cumbrous as rarely to be used. The Scotch law, on the contrary, permits a declaratory action to be instituted by the party in possession or expectancy *quia timet*, and enables him to make all whose claims he dreads parties, so as to obtain a decision of the question immediately."—*Speeches*, vol. 2, pp. 391, 392.

Special pleading.

We will pass over the observations which follow upon technicalities of pleading, long since obselete, but flourishing at that time in rank luxuriance—upon fines and recoveries, the abolition of which consigned to well merited oblivion much curious learning, and many thousand skins of parchment; stopping however for a moment to notice a valuable recommendation made by Mr. Brougham, and subsequently embodied by him in his Local Courts Bill, viz., to allow a legatee to sue an executor or administrator for his legacy, and the mortgagor to sue for his rights. If in these and similar cases it should be found necessary to take accounts, the old action of account might be improved and rendered available in the Courts of Local Jurisdiction, wherein, as well as in the Superior Courts, much might be readily disposed of at law, which has hitherto gone into the Courts of Equity. The Law of Arbitration might moreover be usefully extended, so as to avoid the tedious and cumbrous expense of Chancery suits. How great would be the advantages

Equitable jurisdiction of Local Courts.

Proposal for an extension of the Law of Arbitration.

to be derived from an improved system of Arbitration before trial, and how many expences and delays would be avoided,—how many trifling and frivolous suits would be put an end to at the period when settlement should be most desirable. "How often," remarks Mr. Brougham, "have I been able to trace Bankruptcies and Insolvencies to some lawsuit for the amount of ten or fifteen pounds, the costs of which have mounted up to large sums, and been the beginning of embarrassment."—*Speeches*, vol. 2, p. 407. 1828.

Courts of Reconcilement.

These last mentioned evils have long since been obviated in a great measure by the institution of County Courts, but the Court of Reconcilement, so often and so forcibly urged by Lord Brougham, has never been established. Now that the Jurisdiction in Testamentary and Matrimonial causes is given to a distinct Common Law Court, by the 20 & 21 Vict. c. 77, and the 20 & 21 Vict. c. 85, the benefits which would result from so friendly a mode of terminating litigation in families will speedily become more manifest, more especially as the daily exposure in this Court of domestic feuds, and of their calamitous results, is not without serious evil.

Defects in the conduct of civil causes.

We proceed to cite some very powerful observations made by Mr. Brougham, on the tendency in parties to endeavour to conceal from their opponents as much as possible of their case, and the encouragement given by our jurisprudence to this tendency. It is clear that in many respects the practice of our Courts is still to be censured as defective in this particular.

"Here the sound principles which should guide us are

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obvious. Whatever brings the parties to their senses as soon as possible, especially by giving each a clear view of his chance of success or failure, and, above all things, making him well acquainted with his adversary's case at the earliest possible moment, will always be for the interests of Justice, of the parties themselves, and indeed of all but the practitioners. It is the practitioners, generally, that determine how the matter shall proceed, and it may be imagined that their own interests are not the least attended to. The seeming interest of two parties disposed to be litigious in many cases appears to be different from the interests of Justice, although their real interests, if strictly examined, will not unfrequently be found to be the same. Now, justice is embarrassed by the disingenuousness of conflicting parties; justice wants the cases of both to be fully and early stated; but both parties take care to inform each other as little as possible, and as late as possible, of the merits of their respective cases. One tells as much of his case as he thinks good for the furtherance of his claim, and the frustration of the enemy's,—so does the other give only as much of his case in answer as may help him, without aiding his adversary; and the Judge is oftentimes left to guess at the truth in the trick and conflict of the two. The interest of the Court and of Justice being to make both parties come out with the whole of their case as early as possible, the law should never lend itself to their concealments. This remark extends to the proof as well as the statement of the case. An intimation of what the evidence is, may often stop a cause at once. In Scotland, the law in this respect is better than ours; for no man can produce a written instrument on the trial without having previously shewn it to his adversary. For want of this salutary rule, we have often seen the most useless litigation protracted for the sole benefit of the practitioners."—*Speeches*, vol. 2, p. 403.

Concealment aimed at by both parties.

He condemns the system of Mesne Process.

The system of Arrest upon Mesne Process is next commented upon, and its hardships and inconveniences forcibly pointed out. Its discontinuance, except in extreme cases of contumacy or fraud, or meditated escape, followed the Report of the Real Property Com-

missioners—the statute abolishing it being carried by Lord Brougham himself. 1828.

We pass over the remarks made by the speaker upon the technicalities, the intricacies, and the verbosity of special pleading; and he is most severe upon this branch of the law, even while deprecating severity in the presence of his friend and instructor in the science, the late Sir Nicholas Tindal, one of the greatest ornaments of the English Bench, at that period Solicitor General. How far practice had departed from sound principles is demonstrated in powerful terms. Those principles are thus enunciated:—

Sir Nicholas Tindal, formerly a very able Pleader, Solicitor General at this period.

"The first great rule of Pleading should be to induce and compel the litigant parties to disclose fully and distinctly the real nature of their respective contentions, whether claim or defence, as early as possible. The second is, that no needless impediment should be thrown in the way of either party in any stage of the discussion within the court, whether plea, replication or rejoinder, whereby he may be hindered to propound his case in point of fact or of law. In the third place, all needless repetitions, and generally all prolixity, should, as well as mere reasoning which neither simply affirms or denies any proposition of fact or of law, be prevented: and all repugnant or inconsistent pleas should be disallowed as well as all departure from ground once taken."—*Speeches*, vol. 2, pp. 415, 416.

These words are followed by numerous illustrations of variances in practice from the principles thus laid down, and within the personal knowledge of Mr. Brougham himself. Before him, scarcely any one had dared to raise a finger against the sacred mystery of Special Pleading. He fearlessly tore away the flummery by which it was surrounded, and in a few years most of the absurdities which he exposed

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had ceased to exist. The New Rules under which these changes were made were framed by the Judges under a power given in 1833 by the statute 3 & 4 Wm. 4, c. 42.

New Rules of Pleading under 3 & 4 Wm. 4, c. 42.

He enters upon the head of Procedure or Trial.

A topic of far more general interest than that of Special Pleading is now presented to us, coming under the head of Procedure or Trial. At the threshold of this branch of the inquiry we find some excellent remarks on trial by Jury, which will find an echo in the breast of every man who has had judicial experience, and has narrowly watched this most excellent of all our institutions. They are doubly important at a time when it is rather fashionable to arraign verdicts,* and to call in question the value of a judgment formed by men sometimes of very inferior capacity to those who either preside or practice in courts of justice. The writer of these pages has often reflected, with the greatest admiration and astonishment, at the sound and enlightened opinion arrived at by the common sense of twelve men, who have contributed the various qualities of their minds to the investigation and weighing of evidence submitted to them. That juries are infallible no one can suppose—"Humanum est errare;"† but the system is as near perfection, to do

Excellency of the English system of trial by jury.

* The late appeal to an individual of the highest scientific attainments, who reviewed in his study the evidence adduced at the trial, is no proof of the imperfection of our jury system, but manifests the difficulties experienced by the authorities, who after all have been obliged to act in a manner most illegal.

† From the consideration of this fallibility of human judgment, it may be argued that the institution of a Court of Criminal Appeal, to review verdicts in certain cases, might take place without shaking the authorities of juries.

justice between man and man, as can be devised by human ingenuity. 1828.

"Speaking from experience and experience alone, as a practical lawyer," says Mr. Brougham, "I must aver that I consider the method of juries a most wholesome, wise, and almost perfect invention for the purposes of judicial inquiry. In the first place it controls the Judge who might, not only in political cases, have a prejudice against one party or a leaning towards another, but might also in cases not avowedly political, where some chord of political feeling is unexpectedly struck if left supreme, shew a bias respecting suitors, or what is as detrimental to justice, their counsel or attornies. In the second place it supplies that knowledge of the world, and that sympathy with its tastes and feelings, which Judges seldom possess, and which, from their habits and station in society, it is not decent that they should possess, in a large measure, upon all subjects. In the third place, what individual can so well weigh conflicting evidence as twelve men indifferently chosen from the middle classes of the Community, of various habits, character, prejudices, and ability? The number and variety of the persons are eminently calculated to secure a sound conclusion upon the opposing evidence of witnesses or of circumstances. Lastly, what individual can so well assess the amount of damages which a plaintiff ought to recover for any injury he has received? How can a Judge decide, half so well as an intelligent jury, whether he should recover, as a compensation for an assault, fifty pounds, or a hundred pounds, damages? or for the seduction of his wife or daughter, fifteen hundred, or two thousand, or five thousand pounds damages? The system is above all praise; it looks well in theory and works well in practice; it wants only one thing to render it perfect, namely, that it should be applied to those cases from which the practice in Equity has excluded it; and that improvement would be best effected by drawing back to it the cases which the Courts of Equity have taken from the Common Law, and which they constantly evince their incapacity to deal with, by sending issues to be tried whenever any difficulty occurs."—*Speeches*, vol. 2, pp. 437, 438.

Advantages of the system pointed out in detail.

An interesting paper upon the subject of Juries was not long since read to the Law Amendment Society by

Paper on juries by George Harris, Esq.

1828. Mr. George Harris of the Middle Temple, who has examined the question with great learning and intelligence. Notwithstanding, however, that there is much force in his arguments that jurymen are frequently unfitted, from their habits and education, to comprehend difficult legal questions, or to compare the niceties of scientific evidence, yet, on the other hand, a change in the composition of a jury would, we submit, be attended in many respects with considerable disadvantage. In the first place an infusion of jurymen of a higher grade would, in the minds of the lower orders, from which class come the great majority of offenders impair that character for impartiality which now gives such weight and authority to the verdict of a jury. There would be a feeling generated that the principle, as old as our constitution, viz., that a man should be tried by his peers, has been assailed and departed from. Question in the slightest degree the impartiality of a jury, and the whole fabric at once falls to the ground. Another suggestion, namely, that special juries should be summoned in difficult and important cases, would be liable to the same objection. Mr. Brougham's Libel Bill, in 1816, provided that, in order to ensure equality of justice between the Crown and the subject, the former should not have the privilege of summoning a special jury, in Criminal Informations for Libel. In the event of the whole Jury being Special, and consequently taken from a higher class than the common jury, especially in criminal cases involving the highest penalty of the law, the prisoner would necessarily feel greater dissatisfaction than where a part at least of those who were to try him had

His proposal to introduce special jurymen in Criminal cases questioned.

Observations on juries.

come from a class in society nearer to his own. Nor, again, would the power to summon professional and scientific men to assist in the inquiry be attended in the result with the benefit which perhaps, on first examining the question, we should be disposed to expect from it. The great varieties of opinion existing among scientific men on matters connected with their professional pursuits, and upon which no fixed and certain rules can be laid down; their habit of looking at questions only from one point of view, and the consequent inability in many to enlarge their comprehension to general principles: and lastly their tenacity of opinion, would greatly neutralize any advantage which they would bring with them from superior knowledge or acuteness in investigating particular facts. It is doubtless, with a full consideration of the advantages of the present system of juries taken as a whole, although perhaps slightly defective in its parts, that we do not find in the history of Lord Brougham's career, as a Law Reformer for nearly fifty years, any attempt made to impugn its value or to alter the arrangement of its details with a view of improving the whole fabric, nor has he ever joined with those who altogether condemn the system of Grand Juries as cumbrous and obsolete, although he may consider it capable of improvement in some particulars. No man knows better than he does of how important a character is the shield thus held between the Crown on the one hand and the subject on the other. While the petty jury confines its attention to the occurrences within the Court, where a prisoner is within the dock upon his trial, the duty of the Grand Jury is to see that there is sufficient pretence upon the indictment

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Advantages of Grand Juries.

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for bringing a man to the disgrace of even standing at the bar at all for trial. Our ancestors wisely multiplied the safeguards against arbitrary power, and of these esteemed the protection of a Grand Jury among the most efficient. Plausible as may appear to be the arguments used by those who would abolish the system in the metropolis, let the public be on their guard against the tendency to entrust the Liberties of men to the power or capacity of the Police Magistrates, however discerning and impartial, in deference to the urgent solicitations of those with whose business or amusement the occasional discharge of an important duty may interfere. Often as Lord Brougham has recommended the appointment of a Public Prosecutor for the relief of private individuals from an arduous and embarrassing duty, he has never coupled that recommendation with arguments for its necessity deduced from the uselessness of the Grand Jury, or the unwillingness of some to undertake the duty which they are called upon as fellow citizens to discharge.

Public Prosecutor recommended by Lord Brougham.

Evidence.

Proceeding by a natural transition from the subject of Juries to that of Evidence, Mr. Brougham suggests, but with less confidence than usual, a valuable reform which he has since been able to carry into effect, viz. that parties should be witnesses in their own cause. A period of twenty-three years, however, elapsed from the date of this Speech till the Act passed which established the truth of his propositions.

Mr. Brougham's observations on parties being made witnesses.

It appears, however, that he spoke rather out of respect to some persons of great authority who opposed any alteration in the Law of Evidence than with any hesitation as to the soundness of his own opinions.

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"The friend of exclusion," he remarks, "proceeds upon the supposition that the situation of a party differs wholly from that of another person, whereas it only differs, in the degree of the bias arising out of interest, from the situation of many who are every day allowed to depose. He also maintains that it is dangerous to receive the party's evidence, because of the temptation offered to perjury. That there is much in this argument, I admit; but, speaking from my own observation, I should say that there is more risk of rash swearing than of actual perjury—of the party becoming zealous and obstinate, and seeing things in false colours, or shutting his eyes to the truth, and recollecting imperfectly or not at all, when his passions are roused by litigation."—*Speeches*, vol. 2, p. 438.

Working of the new system in the County Courts.

Experience of the modern practice, tested daily in the County Courts, confirms the truth and soundness of the above observations. Perjury doubtless is increased, but very often testimony entirely contradictory may be accounted for in the manner pointed out by Mr. Brougham, without necessarily arriving at the conclusion that parties are intentionally violating the sanctity of an oath.

"Why refuse," he adds, "to allow a party in a Cause to be examined before a jury when you allow him to swear, in his own behalf, in your Courts of Equity, your Ecclesiastical Courts and even in the mass of business decided by common law Judges on affidavit? Why is the rule reversed on passing from one side of Westminster Hall to the other, as if the laws of our nature had been changed during the transit, so that no party being ever allowed before a Jury to utter a syllable in his own cause, in all cases before an Equity Judge parties are fully sworn to the merits of their own cause? If it be said that there is no cross-examination here, I answer that there is a very good argument to shew the inefficiency of Equity proceedings for extracting truth from defendants, but no reason for allowing a different rule in the two jurisdictions."—*Speeches*, vol. 2, pp. 440, 441.

No fruit of Lord Brougham's zealous and persever-

1828. ing labours in the cause of Law Reform has, we have reason to believe, given him more ample satisfaction than the part he has taken in effecting this change of the Law of Evidence. Although public opinion was somewhat slow to sympathize with and adopt this change, yet the way had been already prepared for it by the Statute which we owe to his eminent contemporary and colleague in the passing of many useful measures, the late Lord Denman, whereby interest in a witness no longer disqualified him from giving evidence.* We find, however, that in the very Speech we are now contemplating, this imperfection of the Law of Evidence had not escaped the searching eye of Mr. Brougham.

Able services of Lord Denman in the same direction.

Written evidence.

We have our attention next directed to Written Evidence; and valuable as is the Statute of Frauds, the Reformer of our Laws would have its provisions still further extended than they are at present. He speaks with commendation of the French law, which requires that all contracts for sums above 150 francs should be in writing, and recommends the adoption of such an enlargement of our own Statute, more especially as, with the advance of Education, to exact a written document would occasion very little inconvenience.

It is clear that our Laws are still capable of great Amendment in this direction. There are nice ques-

* Stat. 6 & 7 Vict. c. 85. Mr. Pitt Taylor prepared the draft of the statute 14 & 15 Vict. c. 99, while his zeal and ability greatly assisted Lord Brougham in carrying it through Parliament. Lord Denman had originally charge of the draft, but it was afterwards entrusted to Lord Brougham, as its more natural guardian and sponsor.

tions which often lead to considerable difficulty in determining what is an interest in land requiring a written contract. Upon no subject are there so many conflicting decisions, and, in the words of Lord Brougham, "a judicious enactment restoring the force of the statute in cases where a subtlety of construction has curtailed it of its intentions, and extending it to other matters to which it is at present inapplicable, would be highly beneficial in preventing perjury and litigation, and could offer no impediment to commerce, further than the beneficial one of narrowing the credit given by small tradesmen."—*Speeches*, vol. 2, p. 445. Among the cases in which a written document might be made requisite as a proof of the contract, are warranties of soundness, upon which, when not in writing, no testimony is more conflicting and unsatisfactory. The suggestion that they should be brought under the requisition of the Statute of Frauds, is due to Mr. Edlin of the Western Circuit, who has made himself master of the principles and science of his Profession.

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Extension of the provisions of the Statute of Frauds to certain cases, *e. g.* warranties of soundness.

Having noticed the inconvenience frequently arising from the strictness of the law in not obliging any witness to answer a question which may tend to criminate himself, a rule shewing how extremely scrupulous our Law is in guarding the liberty and safety of individuals, entirely opposite to that prevailing in most foreign countries, Mr. Brougham comments upon the exclusion of the evidence of Quakers and other Sectaries from criminal cases, the oath requisite to the reception of their testimony being forbidden by their religious scruples. There was no reason why their affirmation, being admissible in civil, should not be

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permitted in criminal matters; and accordingly the law in this respect has been altered exactly in the manner he suggested:—"There was no reason," he justly observed, and in accordance with the principles of the Common Law, "for excluding any individual, of whatsoever religion, sect or persuasion he might be, from giving testimony in cases of every kind, provided he believed in the existence of a God, and a state of future rewards and punishments, or was not openly infamous by sentence of a Court."—*Speeches*, vol. 2, p. 450. We pass on to some observations on the law as to construction of written instruments, and Mr. Brougham is much disposed to question its correctness. Why should the assistance of the jury, often qualified in the highest degree to understand and explain such documents, be entirely rejected in this province? and why should there not be a relaxation of a rule no less stringent, but often working equal injustice, viz. that no extrinsic evidence is admissible to explain a patent ambiguity? The two rules, operating together as they frequently do, tend, he asserts, greatly to narrow and darken the path to correct decision. It certainly does not seem easy to find a reason why the Court should appropriate to itself the construction of written instruments. In nine cases out of ten where a difficulty exists in construing them their sense is totally independent of any matter of law. In legal documents the meaning is generally well ascertained; but it is in mercantile contracts that disputes are most likely to arise, and in these the knowledge and experience of Juries would render great assistance to the Judge. The Wills Act

Construction of written instruments.

Patent ambiguities.

has remedied many of the defects pointed out by Mr. Brougham in this branch of the Law, and a most valuable clause in the Probate Bill, passed in the session of 1857, 20 & 21 Vict. c. 77, will obviate others which have continued to exist up to the present time. We allude to the provision made under the Act, by section 91, for a Public Depository of Wills during the lifetime of the testators. How many difficulties and misfortunes, and how much litigation have arisen from the total loss of a will, or the discovery of wills repugnant to each other. 1828. Public depository of Wills, established in 1857;

Any person, hereafter, may deposit his Will in safe custody, on payment of a small fee, where it will be safe from those whose interest perhaps it is to conceal, or hold it back, and where it will be at once forthcoming at his death.

We may observe, however, that a no less important recommendation made by Mr. Brougham in 1828 was never carried into effect:— but urged by Mr. Brougham in 1828.

"I suggest, as the obvious corollary, for remedy of the great bulk of the mischief I complain of, the laying down by the Legislature of certain formulas, couched in plain language, and of an import recognised by written law. You give this help to justices to prevent convictions and orders being set aside for technical error. Why not give it to men often less learned than they, for disposing of their property necessarily without professional assistance? Why not say, that whoever would give a fee should use these words, an estate for life, these,—that whoever would clothe the takers of that estate with certain powers may do it thus—and so forth—not stating that such are the only words which shall effect the same purpose, but that, at any rate, those shall."—*Speeches*, vol. 2, p. 457.

The Law of Limitation next occupies the Speaker.

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He regards it as an appendix to that of Evidence, and remarks that hardly any branch of our Jurisprudence demands more revision. Why should there be no statutory limitation to a Bond or other Specialty? why should there be so many means of evading the Statute of Limitations, by which relief was intended to be given in the case of extinguished or obsolete clauses? why should not an acknowledgment in writing be the only bar to the Statute? why should not the period be contracted for setting up a claim to real property, and to ecclesiastical rights? The recommendations of Mr. Brougham have been followed in all these instances. That applicable to claims liable to be defeated by the Statute of Limitations was adopted by Lord Tenterden in the following year, and embodied in the stat. 9 Geo. 4, c. 14.

Statutes ought to apply to Specialties.

We have quoted at such length from this masterly Analysis of the state of the Law, that we must hasten to a conclusion. We omit with reluctance some forcible observations with which Mr. Brougham prefaces his desire to see an alteration in the rule observed by counsel in addressing the Court, whereby a plaintiff's advocate cannot comment to the jury upon the evidence he has adduced, unless evidence has been called on the part of the defendant. "Much important evidence," he remarks, "is frequently shut out, by the stratagem of counsel to avoid a reply."—*Speeches*, vol. 2, pp. 463, 464. It is only very lately that the justice of these comments has been recognised by the New Common Law Procedure Act, 17 & 18 Vict. c. 125, which allows the counsel for the plaintiff to sum up his evidence.

Evils of shutting out a reply.

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After making some severe remarks on the anomalous state of the Law at that time respecting Debtor and Creditor, and on the defects of the Insolvency Court, Mr. Brougham suggests as a relief to debtors, and also as a furtherance to the rights of creditors, that executions should be levied by instalments. The mode of enforcing payment by instalments is found to operate most usefully in the County Courts, but here when the debtor has made default in one instalment, execution may be levied for the whole residue of the debt. An improvement might be introduced into the Law of the Superior Courts similar to that suggested by Mr. Brougham.

Payment by instalments of debts recovered by action, might be introduced into the Superior Courts.

"It would be an excellent modification of the principle by which any one obtaining a judgment should get instant execution, to vest in Judges the discretion of ordering the execution to be levied by instalments, upon reasonable security being given.* Hurried seizures, and sales for next to nothing, would thus be avoided; as would the destruction of many valuable concerns, to the ruin of the debtor, and the loss of the creditor also. The reasonable delay thus safely granted would further tend to prevent groundless appeals and frivolous defences for mere dilatory purposes."—*Speeches*, vol. 2, p. 475.

As regarded the question of costs, Mr. Brougham urged that they should be more in the discretion of the Court trying the cause, as he considered a scale of costs fixed by Statute often inapplicable to cases very different from each other in merit and importance. Having thus traversed the wide field of inquiry he

* The last County Court Amendment Act precludes a Judge from ordering payment by instalments, in cases where the judgment is for upwards of 20*l*.

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had proposed to himself to expatiate in, cursorily adverting at the last to the law of Partnership and Bankruptcy, as extremely intricate, uncertain, and contradictory, and thus abundantly fruitful in fraud and litigation, he exhorted the House to address itself to a general and comprehensive Reform of the whole system of our Jurisprudence.

A Reform to be useful must be general and comprehensive.

"I must, however, once more press upon the attention of the House the necessity of taking a general view of the whole system in whatever inquiries may be instituted. Partial Legislation on such a subject is pregnant with mischief. Timid men, but still more blind than they are timid, recommend taking a single branch at a time, and imagine that they are consulting the safety of the mass. It is the very reverse of safe. In the body of the Law, all the members are closely connected; you cannot touch one without affecting the rest; and if your eye is confined to the one you deal with, you cannot tell what others may be injured, and how. Even a manifest imperfection may not be removed without great risk, when it is not in some wholly insulated part; for it oftentimes happens that, by long use, a defect has given rise to some new arrangement extending far beyond itself, and not to be disturbed with impunity. The topical Reformer, who confines his care to one flaw, may thus do as much injury as a surgeon who should set himself about violently reducing a luxation of long standing, where nature had partially remedied the evil by forming a false joint, or should cut away some visceral excrescence in which a new system of circulation and other action was going on. Depend upon it, the general Reformation of such a mechanism as our Law, is not only the most effectual but the only safe course. This, in truth, alone deserves the name of either a rational or a temperate Reform."—Pp. 478, 479.

Such a general Amendment of the practice of the Law Mr. Brougham advised should not be hastily effected, and only after a careful inquiry into the whole subject. In no work had their Constituents a deeper

interest; none could ensure to those who should devote themselves to its labours, a higher or more durable fame. The triumphs of success in such an enterprise would be incomparably superior to the most brilliant victories obtained in war. 1828.

Peroration of the speech.

"It was the boast of Augustus," he thus concluded his earnest appeal to the Legislature; "it formed part of the glare in which the perfidies of his earlier years were lost, that he found Rome of brick, and left it of marble; a praise not unworthy a great Prince, and to which the present reign also has its claims. But how much nobler will be the Sovereign's boast, when he shall have it to say that he found Law dear, and left it cheap; found it a sealed book, left it a living letter; found it the patrimony of the rich, left it the inheritance of the poor; found it the two-edged sword of craft and oppression, left it the staff of Honesty and the shield of Innocence! To me, much reflecting on these things, it has always seemed a worthier honour to be the instrument of making you bestir yourselves in this high matter, than to enjoy all that office can bestow,—office, of which the patronage would be an irksome incumbrance, the emoluments superfluous to one content, with the rest of his industrious fellow-citizens, that his own hands minister to his wants. And as for the power supposed to follow it, I have lived near half a century, and I have learned that power and place may be severed. But one power I do prize—that of being the advocate of my countrymen here, and their fellow-labourer elsewhere, in those things which concern the best interests of mankind. That power I know full well no Government can give, no change take away."—Pp. 485, 486.

Resolution for an address to the Crown unanimously carried.

The debate upon this memorable occasion was adjourned from the 7th to the 29th February, when the following Resolution was unanimously carried—"That an humble address be presented to his Majesty, respectfully requesting that his Majesty may be pleased to take such measures as may seem most expedient for the purpose of causing due inquiry to be made into

1828. the origin, progress, and termination of actions in the Superior Courts of Common Law in this country, and matters connected therewith, and into the state of the Law regarding the transfer of Real Property." We have dwelt at great length upon this remarkable speech, not only because Lord Brougham's career as a Law Reformer may be said to have dated from it, but also because it contains the germ of almost all the improvements which have been effected in our jurisprudence since the period of its delivery. We shall find in the following Chapters that very many of these improvements were carried through Parliament by himself, while many formed the basis of legislation in other hands. The statement of 1828 contains in its results a most admirable refutation of those who assailed the doctrines of Mr. Brougham as visionary and theoretical, while it is also the best guarantee for the adoption of many measures hitherto unsuccessfully introduced. We must always remember that the writings of Sir Samuel Romilly remained neglected simply because they appeared to innovate upon established maxims, and yet we have lived to see his intellectual superiority over his own times crowned by the adoption of alterations in the Law which he urged as necessary and just. So will it be hereafter with Lord Brougham; nevertheless in one respect more fortunate than Romilly, inasmuch as the heavy toils of his mid-day strength are already receiving in the evening of his life some share of their due reward.

Mr. Brougham's career as a Law Reformer dates from this period.

Appointment of the Common Law and Real Property Commis-

The address to the Crown thus unanimously resolved upon in the House of Commons led to the appointment of two commissions, the Common Law Commis-

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Names of the Commissioners.

sion and the Real Property Commission. The individuals selected to fill the duties of the former were among the most eminent that the legal profession could furnish, viz. Messrs. Bosanquet, Parke, and Alderson, and Serjeant Stephen. The three first having been raised to the Bench, Messrs. F. Pollock, Starkie, Evans and Wightman were added to the commission. The Real Property Commission contained the names of those possessing a no less distinguished reputation in the Courts of Equity and in Conveyancing, the present Lord Chancellor heading the list. These two important Commissions commenced their labours without delay, and, after investigating a great body of evidence, published very valuable reports, the foundation of much useful legislation, on the subject of their respective inquiries. In Mr. Brougham they found a most zealous and indefatigable coadjutor.

CHAPTER IV.

Commencement of the struggles on the subject of Parliamentary Reform—Mr. Brougham introduces his Local Courts Bill, 29th April, 1830—His speech on that occasion—Question of unanimity of juries—Appeal from the Local Courts—He urges the enlargement of the system of arbitration—Proposes equitable jurisdiction to be given to the Local Courts—Speech on the Eastern Slave Trade—Mr. Brougham takes his seat for Yorkshire—Becomes Lord Chancellor in Lord Grey's Cabinet—His activity in that office described by Sydney Smith—He introduces various measures of Legal Reform—Discussions and divisions on the Reform Bill—Accession of Lord Melbourne to office—Passing of the Reform Bill—Lord Brougham again betakes himself to the introduction of measures of Law Reform—Central Criminal Court Act—The King sends for the Duke of Wellington—Resignation of Lord Melbourne and accession of Sir R. Peel to power—His shortlived Administration—Lord Melbourne returns to office, but without Lord Brougham as Chancellor—Speech on Education and Infant Schools—Sir Charles Pepys becomes Lord Chancellor, and is created Lord Cottenham—Remarks on the treatment Lord Brougham met with from his party on that occasion.

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IN 1830 commenced those stirring events respecting Parliamentary Reform, which followed close upon the concession of Catholic Emancipation. Notwithstanding the important part taken by Mr. Brougham in the political struggle, he nevertheless found time, on the 29th April in that year, to move for leave to bring in a Bill for the establishment of Local Courts in England. Having paid a high and well merited tribute to the Reports emanating from the two Commissions, he gave as a reason for bringing forward the subject of Local Judicature, that they had left this ample field of inquiry entirely untrodden and untouched. It was in the outset of this speech that Mr. Brougham illus-

Well known illustration of the traveller.

trated his topic by the well known narrative of the traveller, astonished to find himself in a country boasting of its civilization, but in its administration of the Laws only to be compared with a region just emerging from a state of barbarism. 1830.

Description of the ruinous expense of an English law suit.

"If, Sir, it were asserted by some traveller that he had visited a country in which a man, to recover a debt of £6 or £7, must begin by expending £60 or £70, where, at the outset, to use a common expression, he had to run a risk of throwing so much good money after bad, and to pay almost as much even if he succeeded, it would at once be said, that whatever other advantages that country enjoyed, at least it was not fortunate in its system of law. But if it were further related, that in addition to spending £60 or £70, a man must endure great difficulties, anxiety, and vexation, infinite bandying to and fro, and moving about from province to province, and from court to court, before he could obtain judgment, then our envy of the country where such administration of the law and legal institutions existed, would be still further diminished. If to this information it were added, that in the same country, after having spent £60 or £70, the adversary of the creditor had the power of keeping all his property out of his way, so that after all the suitor's expense, all his delay, and all his anxiety, it must still be doubtful whether he could obtain a single farthing of his debt; if, furthermore, it were stated, that in the same country, although the debtor were solvent and willing to pay what the law required at his hands, the creditor would receive, it is true, his original claim of £6 or £7, but not the whole £60 or £70 which he had expended in costs to recover it, by about £20, so that on the balance he would be some £13 or £14 out of pocket by success, over and above the amount of the debt which he recovered, after being exposed to a variety of needless plagues, beside the unavoidable annoyance of these proceedings; if we were told of such a case, would not the natural inquiry be, 'Whether it was possible that such a country existed.' Sir, the individual to whom this strange information was given, if he supposed it possible that such a country existed, would at least pronounce it to be one of the most barbarous and unenlightened in the world. That it must be a poor country, he would

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think quite obvious, and equally obvious that it must be of no commercial power, of no extent of capital, of no density of population, because those circumstances most necessarily produce from hour to hour transactions involving important and valuable interests. Nevertheless, I need not remind the House,—for every man who hears me must be aware (many are aware to their cost) of the fact—that such a country, so unfortunately circumstanced, is no other than that in which I now speak—England."—*Speeches*, vol. 2, pp 491, 492.

Cheap and speedy administration of justice in Scotland.

Having proceeded to review in detail some of the delays, inconveniences, and expences thus vividly pourtrayed, he shewed that an easy remedy existed for this anomalous state of things in the further development of certain Courts already existing, which among our Saxon ancestors were the chief tribunals in the kingdom, and held, he asserted, a criminal as well as civil jurisdiction. Scotland had already benefited to a great degree by this cheap and speedy mode of administering justice, and he described the small cost of litigation in that country as compared with our own most costly and dilatory procedure:—

"With all my partiality," he said, "and with all my prejudices in favour of the English system, I cannot help envying Scotland this part of her law. Is it, then, possible so to extend the jurisdiction, so to amend the constitution of the County Courts of England, as to make them capable of bestowing the same advantages? Is not this a question worthy of our most serious consideration? I feel that I am taking up too much time of the House, and yet the importance of the subject leads me still further into detail. It is the greatest possible error to imagine that inferior suitors ought to have inferior judges; that when questions are to be decided respecting persons of superior rank, wealth, and intelligence, men of superior intellect and station should be provided for that purpose; that when a matter of £100 or upwards is to be decided, a high and distinguished judge should be employed for the purpose; but that in a matter

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only involving two, three, five, or six pounds, any one will do for a judge, a sheriff, or a sheriff's assessor, or whatever name he may bear; that any one will answer to preside in a court for the decision of such petty concerns, whether he be a man qualified or unqualified, a man of sense or a man of no sense; for the poor man, it seems to be the opinion, that it does not signify what sort of Judicature he has to decide his cause. To my mind, no notions appear to be more crude than these. Forty shillings may be of more importance to the poor man than the sum for which the great man litigates; the poor man contests not only for the sake of the sum at issue but that he may not be subject to wrong and oppression, and he feels that oppression the more grievous and intolerable, seeing that it is an evil reserved for the Class to which he himself belongs. It is not always for the sum disputed that he goes to law; he proceeds in resistance of wrong and oppression, and he sues as readily for 2*s.* as for 40*s.* In this frame of mind, then, he goes away from court as much dissatisfied as the wealthier suitor who has lost £1000, and give me leave to say he has a right to be dissatisfied, and his is a dissatisfaction which will not be appeased otherwise than by a full supply of that for which he has gone before his judge—Justice. I know these Judges in the Courts of Requests do good. I say they do good by comparison, better something of justice than nothing; it may be slovenly justice, but so precious a thing is justice that I should rather have even slovenly justice than the absolute peremptory and inflexible denial of all justice."—*Speeches*, vol. 2, pp. 509, 510, 511.

The poor man ought to have his tribunal for recovery of small sums of money.

Mr. Brougham proceeded to point out in what manner the existing Local Courts might be usefully added to and extended, advising that in many cases a jury should be dispensed with, and giving a general outline of the proposed constitution of the Court. His remarks on these cases in which trial by jury is retained are most valuable in a general point of view as bearing upon the question, whether unanimity in juries is desirable.

Juries may be dispensed with.

"In cases where there is conflicting testimony—in cases

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where it may be necessary to contrast documentary with oral evidence—in cases of that kind I would have a jury, for I know of no mode so perfect, where there is to be a decision on contradictory evidence, as that of assembling a number of men—I will not say twelve, for there is nothing in the particular number—of different feelings and habits of thinking, and let them, after an investigation of the whole case, pronounce upon it by their verdict; but I would not have that verdict the verdict of the majority, for, paradoxical as it may seem, I would have a forced unanimity among the jury. Were it otherwise, there would never be that patient investigation which is necessary to come to the truth. There would be cries of 'Question,' such as are sometimes heard in larger and less Judicial Assemblies. There is, in short, no more effectual way of coming at the truth than such a trial in such cases. In them, then, I would have the matter decided by the jury. I would also have juries in cases where damages are to be assessed in cases of tort, seduction, assault, and trespass, and even in attacks on property, as well as in personal wrongs, but there are many cases in which they might well be dispensed with. I repeat that I state this not from under-valuing in any degree the advantages of that great Institution, for I hope the time is not far distant when it will become general throughout every part of the Empire." —*Speech on Local Courts*, vol. 2, p. 517.

Question of unanimity of juries discussed.

It is to be observed that juries are made use of in the County Courts, not with reference to any particular description of action as here suggested by Mr. Brougham, but according to the amount of damages or sum of money sued for. Where the plaint is for a sum above £5, each party on his application may obtain a jury, consisting of five men, and the Judge may direct a jury in all cases. The qualifications of the Judge are next adverted to, it being important to the effectual administration of justice that he should possess considerable learning and experience. "He ought also to be well paid, for if the public expects that his

Qualification of the Judge of the Local Court.

whole time should be devoted to his duties, they should pay him well for it." We insert this passage because the principle adopted hitherto has been to give the Judge so low a salary, that lawyers in tolerable practice, and with any prospects of professional success, will not accept the office of County Court Judge, and thus the local tribunal does not hold that position in the public estimation to which its importance is entitled. 1830.

Appeal should be to the Judge of Assize.

The appeal from the decision of the Judge of the Local Court Mr. Brougham proposed should be to the Court of Assize, where it should be reviewed in the presence of the local Judge, but without his having any share in the determination of the appeal. The disadvantages arising from the contrary practice in the superior Courts had not escaped his vigilant observation, and he thus commented on them:—

Inconvenience of appeal to the same tribunal.

"Reason and experience have shewn to those who are conversant with the practice of our Courts the very great inconvenience of allowing the Judge, from whose opinion an appeal is made, to have a voice in the decision of that appeal. It often happens that he gives a tone to the feeling of the Court in favour of the opinion which he has given in the Court below, and the result is, in some instances, where a Judge has fallen into an error—for Judges may err as well as other men—that the error is adopted by his brother Judges, and thus confirmed by the decision of the whole court."—*Speeches*, vol. 2, pp. 519, 520.

The subject of Arbitration is dwelt upon in this speech, as it had been in the one on Law Reform, at considerable length. The best interests of the client would, he urged, be best secured by the process of litigation encountering obstacles at the outset, and

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Extension of the system of Arbitration recommended.

No topic has been more strenuously and perseveringly advocated by the great father of Law Reform than an enlargement of the system of Arbitration, not as it is now in practice, but in the earliest stages of the cause. We accordingly find propositions of this nature in almost every Bill introduced by him for the extension of the jurisdiction of the County Courts, and although these have not been adopted to the fullest extent, yet the last Common Law Procedure Act, 17 & 18 Vict. c. 125, empowered the Judge of any Superior Court, either before or at the time of trial, to refer causes involving matters of account to the decisions of Judges of County Courts. A subsequent statute however, introduced without consideration, and carried hastily through Parliament, has revoked this power, much to the annoyance of Lord Brougham. Many other actions may be tried in these Courts by consent, but as the consent of both parties is required the permission is a dead letter.* The complete success of the system of local judicature cannot but afford the most unqualified satisfaction to Lord Brougham, even although at the present time it falls short in some particulars of the wishes and intentions

Success of the Local Courts.

* Here the remedy is very clear, viz., to permit the plaintiffs in all actions of whatsoever character and amount, to initiate the suit in the Local Court, giving power to the defendant to remove cases before a higher tribunal of a certain description and above a certain amount.

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of its founder. It was only at the close of the session of 1857, if we may except Insolvency practice, that Equitable Jurisdiction has been confided to it, in the shape of contentious jurisdiction in Wills up to a certain amount in both Personalty and Realty. Other improvements have yet to be added. If to this contentious jurisdiction in Wills be added hereafter that in deeds to a certain amount, the taking of accounts in trust estates, the empowering legatees to sue executors and administrators, not only will the weight and influence of the Court be greatly increased by the more fully recognised combinations of Law and Equity, but its useful character as a tribunal accessible to the humbler classes of society will be more extensively developed.

A fusion of Law and Equity would greatly enhance their usefulness.

The increasing strife and excitement on the subject of Parliamentary Reform, as well as the serious opposition threatened to the measure in the House of Lords, rendered it impossible for Mr. Brougham to persevere with the Local Courts Bill in the session of Parliament which preceded the death of George the Fourth. In the short interval which occurred before the dissolution consequent on that event, he took an opportunity of again moving a resolution in the House of Commons on the subject of the Slave Trade, with a view of procuring its final abolition in our Colonies. Notwithstanding the motion was negatived by a majority of 29, the numbers being 27 in its favour and 56 against it, the speech delivered by Mr. Brougham on that occasion had a most important effect upon his election for Yorkshire, which shortly afterwards occurred. In the preceding year he had

Subject of the Slave Trade again introduced.

1830. resigned his seat for Winchelsea, after representing that borough in four Parliaments, in consequence of the Marquis of Cleveland, in whose interest he had been returned, giving his support to the Administration of the Duke of Wellington. He then sat for Knaresborough, under the patronage of the Duke of Devonshire, till the dissolution which took place on the 13th of July. The peroration of his speech on the Eastern Slave Trade contains one of the most powerful appeals to be found in the annals of British oratory.

Peroration of his speech on that occasion.

"In vain you tell me," he exclaims, apostrophizing the Senate of his Country, "of laws that sanction such a claim as that of a planter to property in his slaves. There is a law above all the enactments of human codes—the same throughout the world—the same in all times—such as it was before the daring genius of Columbus pierced the night of ages and opened to one world the sources of power, wealth, and knowledge,—to another all unutterable woes. Such it is at this day. It is the law written by the finger of God on the heart of man, and by that law unchangeable and eternal, while men despise fraud and loathe rapine and abhor blood, they shall reject with indignation the wild and guilty fantasy that man can hold property in man. In vain you appeal to treaties, to covenants of the Almighty, whether the Old Covenant or the New denounce such unholy pretensions. To those laws did they of old refer who maintained the African trade. Such treaties did they cite and not untruly; for by one shameful compact you bartered the glories of Blenheim for the traffic in blood. Yet, in despite of law and of treaty, that infernal traffic is now destroyed and its votaries put to death like other pirates. How came this change to pass? Not assuredly by Parliament leading the way, but the country at length awoke. The indignation of the People was kindled; it descended in thunder and smote the traffic, and scattered its guilty profits to the winds. Now, then, let the planters beware—let their assemblies beware—let the Government at home beware—let the Parliament beware! The same

country is once more awake—awake to the condition of negro slavery: the same indignation kindles in the bosom of the same people: the some cloud is gathering that annihilated the Slave Trade, and if it shall descend again, they on whom its crash may fall, will not be destroyed before I have warned them; but I pray that their destruction may turn away from us the more terrible judgments of God."—*Harwood*, pp. 358, 359. 1830.

When the new Parliament met, the first step taken by Mr. Brougham, in his capacity as member for one of the most powerful constituencies in the kingdom, was to give notice of a motion on the subject of Parliamentary Reform. He was not, however, destined again to deliver his sentiments to the House of Commons on this momentous question. The resignation of Sir Robert Peel's Cabinet followed the defeat of the Administration on the proposition of Sir Henry Parnell to refer the settlement of the Civil List to a select committee. On the 22nd November Mr. Brougham took his seat on the woolsack as Lord Chancellor, and on the following day the patent of his peerage as Lord Brougham was made out. At the same time he brought into the House of Lords, and laid upon the table four Bills, viz., the Local Courts Bill, which had been withdrawn from the Commons at the close of the last session of the late Parliament, two Bills for regulating the Practice of the Court of Chancery, and a Bill for establishing the Court of Bankruptcy. The agitation respecting Parliamentary Reform, however, continuing to increase, all these Bills were shortly afterwards abandoned.

Meeting of the new Parliament. Mr. Brougham sits for Yorkshire.

Resignation of Sir Robert Peel's Cabinet.

Mr. Brougham becomes Lord Chancellor, and is created Lord Brougham.

The extraordinary activity and energy of the new Lord Chancellor at this period of his career are thus

1830.

His activity described by Sydney Smith.

graphically described by Sydney Smith, in a speech delivered upon the subject of the Reform Bill, while, however, he adverts in somewhat harsh terms to his predecessor in office. "Then, look at the gigantic Brougham, sworn in at twelve o'clock, and before six p.m. he has a Bill on the table abolishing the abuses of a Court which has been the curse of England for centuries. For twenty-five long years did Lord Eldon sit in that Court, surrounded with misery and sorrow, which he never held up a finger to alleviate. The widow and the orphan cried to him as vainly as the town-crier when he offers a small reward for a full purse. The bankrupt of the Court became the lunatic of the Court. Estates mouldered away and mansions fell down, but the fees came in and all was well; but in an instant the iron mace of Brougham shivered to atoms this House of Fraud and of Delay. And this is the man who will help to govern you—who bottoms his reputation on doing good to you—who knows that to reform abuses is the safest basis of fame and the surest instrument of power—who uses the highest gifts of reason and the most splendid efforts of genius to rectify all those abuses, which all the genius and talent of the profession have hitherto been employed to justify and protect. Look you to Brougham, and turn you to that side where he waves his long and lean finger, and mark well that face which Nature has marked so forcibly—which dissolves pensions, turns jobbers into honest men, scares away the plunderer of the public, and is a terror to him who doeth evil to the people!"* Sydney Smith adds, in a note to this

Miseries and delays of the Court of Chancery.

* Sydney Smith's Works, Longman & Co., 1854, p. 566.

passage published in his works, that Lord Lyndhurst is an exception to those eminent lawyers, whom he thus describes as being willing to perpetuate the abuses of the Court of Chancery. 1830.

In the midst of the absorbing interest produced by the discussion of the Reform Bill in both Houses of Parliament during the year 1831, Lord Brougham found time to bring forward again the Bankruptcy Bill which had been withdrawn in the preceding session, but which he now succeeded in carrying; it is the statute 1 & 2 Wm. 4, c. 56. He also again introduced a Bill to provide for the more expeditious administration of justice in the Court of Chancery; but the very powerful opposition he encountered precluded all hope of its success. This occurred on the 28th September, and on the 7th October he supported the second reading of the Reform Bill, which was thrown out in the Lords by a majority of 41. The Commons in no way discouraged by this defeat, passed the Bill again on the 17th December by a majority of 102, and when it reached the Lords, the second reading was carried, on the 9th April, 1832, by a majority of 9. On the 7th May the Lords went into committee on the Bill, when, on a proposition made by Lord Lyndhurst to postpone the consideration of Schedules A. and B. until C. and D. had been disposed of, the Ministry were in a minority of 35. The resignation of Lord Grey's Cabinet immediately took place; but the Duke of Wellington, who was summoned to the councils of the Sovereign, not being able to form an Administration, Lord Grey returned to office, and with him Lord Brougham again as Lord Chancellor.

1831.

Introduction of the Bankruptcy Bill, and also of a Bill to amend the procedure of the Court of Chancery.

Second reading of the Reform Bill in the Lords, 7th October.

1832.

Resignation of Lord Grey's Cabinet.

1832.

Reflections on the Reform Act of 1832.

The subsequent events are well known. Notwithstanding that a quarter of a century has passed since the period of which we are speaking, and we are now entering upon the discussion of a further Extension of the Franchise, rendered necessary by the progress of Education, and by the general feeling that a share of political power may safely and even advantageously be imparted to the lower classes of the community, although wars and rumours of wars have since occupied our thoughts, our interests and our ambition, yet still the picture of those thrilling times is before us in all its vivid colours, and the roaring of the waves of that popular tumult is still sounding in our ears. Of those who took a prominent part in those memorable transactions, some few remain among us to regulate and direct the more tranquil changes, already promised and soon to be conceded to Popular Opinion, more powerful than Parliament itself. Brougham, the veteran champion of Human Progress; Lyndhurst, "the old man eloquent," the Nestor of debate; Russell, earnest, thoughtful, and full of courage, but not unfrequently paying too costly sacrifices to power; Palmerston, English in honesty and heart, ever conciliating opposition and cementing friendship, but the spoilt child of Administrations, breaking his plaything almost the moment he has got it into his hands.

Third reading in the Lords, 4th June. Royal Assent, 7th June.

The third reading of the Reform Bill passed the Lords on the 4th June, by a majority of 84, and on the 7th it received the Royal Assent. During the same session Lord Brougham assisted in carrying two Bills introduced by Lord Tenterden, and founded on the report of the Real Property Commissioners, viz.

the stat. 2 & 3 Wm. 4, c. 71 (1st August, 1832), entitled An Act for shortening the time of Prescription, and the stat. 2 & 3 Wm. 4, c. 100 (9th August, 1832), entitled An Act for shortening the time required in Claims of *Modus Decimandi*, or Exemption from Tithes. He also himself carried the 2 & 3 Wm. 4, c. 92,* by which the power of the Court of Delegates in ecclesiastical and maritime causes was transferred to his Majesty in Council, and the stat. 2 & 3 Wm. 4, c. 111 (15th August, 1832),† for abolishing many sinecure offices in the Court of Chancery. When we consider the labours which Lord Brougham underwent in connection with his office as Lord Chancellor, and with his duties as Speaker of the House of Lords, during this most arduous session, in the course of which he delivered speeches, each of several hours duration, that he could find time to superintend those measures is most astonishing.

1832.

Various measures introduced by Lord Brougham.

Bill for abolishing sinecure offices in the Court of Chancery.

The agitation of this great question had no sooner subsided than he applied himself as vigorously as before to the prosecution of those questions, connected with the improvement of the Law, which he had advocated in the Lower House, and which he now considered his position as Lord Chancellor would powerfully aid him in carrying. On the 7th March, 1833, he brought in a Bill to carry into effect the recommendations of the Common Law Commissioners re-

1833.

* Act for transferring the powers of the High Court of Delegates, both in Ecclesiastical and Maritime causes, to his Majesty in Council. 1832.

† Act to abolish certain sinecure offices connected with the Court of Chancery, and to make provision for the Lord Chancellor on his retirement from office. 1832.

1833.

Bill for regulating trial and procedure.

specting trial and procedure, and also to enable the Judges to regulate pleadings. The suggestions and co-operation of Lord Lyndhurst tended greatly to the carrying of this measure, which has been productive of the most important results. It is the 3 & 4 Wm. 4, c. 42.*

Reintroduction of the Local Courts Bill.

On the 28th March Lord Brougham again introduced his Local Courts Bill; it passed the second reading, but after much discussion and the final settlement of its details in committee, it was unfortunately thrown out by a majority of two on the third reading, Lord Lyndhurst, in this instance, giving his opposition to the measure. In the same session several Bills were introduced by Lord Brougham, but without success. Among these were Bills for regulating the practice of the Court of Chancery, for establishing a Court of Appeal in Chancery, and for amending the proceedings in the Insolvent Debtors Court. All these measures dropped before they reached a third reading. He was more successful in introducing several Bills founded on the report of the Real Property Commissioners, and here he had Lord Lyndhurst's powerful assistance and support. These passed the Legislature in the course of the session. They are the stat. 3 & 4 Wm. 4, c. 27 (24th July 1833) for limitation of actions and suits relating to Real Property; the stat. 3 & 4 Wm. 4, c. 74 (28th August, 1833) for the abolition of Fines and Recoveries, and the stat. 3 & 4 Wm. 4, c. 106 (29th August, 1833) for Amendment of the Law of Inheritance.

Bills introduced founded on the report of the Real Property Commissioners.

In this session, too, Lord Brougham carried the

* Act for further Amendment of the Law and the better Advancement of Justice. 1833.

stat. 2 & 3 Wm. 4, c. 41 (14th August, 1833)* for improving the Administration of Justice in the Privy Council. The Parliament met on the 4th February in the following year, and on the 26th March he brought in his Bill for improving the system of administering justice in the Criminal Courts of the Metropolis. This important measure, by which offenders in and near London are brought to speedy justice, and thus the expence and evil of lengthened imprisonment are much diminished, passed Parliament without alteration, almost without opposition, and became law on the 25th July, by the stat. 4 & 5 Wm. 4, c. 56.† It is one of the most useful of those statutes for which the country is indebted to Lord Brougham, and it is very desirable that a similar measure should be made applicable to all large towns, occasioning a clearance of the gaols every six weeks. The length of time elapsing generally over the country between commitment and trial, is one of the defects in our system of jurisprudence still susceptible of amendment. Lord Brougham accompanied this measure by a Bill for the appointment of a Public Prosecutor, but this was lost in consequence of a change of Ministry, which shortly afterwards took place.

1834

Bill for establishing the Central Criminal Court.

Bill for the appointment of a Public Prosecutor.

Upon the resignation of Lord Grey, Lord Melbourne had succeeded to the helm of affairs, but had not long continued in that position when the death of Earl Spencer, and consequent removal of Lord Althorp to

* Act for the better Administration of Justice in his Majesty's Privy Council. 1833.

† Central Criminal Court Act. 1834.

1835.

the Upper House, left him without a Chancellor of the Exchequer and leader in the House of Commons. While he was endeavouring to supply these vacant offices, His Majesty sent for the Duke of Wellington, a step which led immediately to the resignation of Lord Melbourne's cabinet. A short interregnum took place, during which the Duke held the seals as one of the Secretaries of State, until the return of Sir R. Peel from Italy. On his arrival Peel became Premier, and a dissolution took place. On the 19th July the new Parliament met, when the Ministry suffered their first defeat on the question of the Speakership, Mr. Abercromby being elected by a majority of six over his opponent Mr. Manners Sutton. This defeat, in a House mustering 626 members, shewed plainly that the Conservative Government could not hold its ground. Sir R. Peel, however, did not immediately resign, but struggled on against very powerful opposition until the 30th March, when a division took place upon the proposition of Lord John Russell to apply any surplus revenues of the Irish Church, not required for the spiritual purposes of that Church, to the moral and religious instruction of the people, without reference to differences of religious opinion.

Resignation of Lord Melbourne,

and accession of Sir Robert Peel.

The Ministry on this occasion sustained a more signal defeat than when its strength had been tested by the choice of a Speaker, many of the opponents of the Administration having on the former occasion been unwilling to remove Mr. Manners Sutton from the chair. After a debate of four nights duration the numbers were, in favour of Lord John Russell's motion 322, against it 289—majority 33. The fate of Sir R.

Lord John Russell defeats Sir R. Peel on the motion for

1835.

Peel's cabinet was sealed by a second defeat on the same question, Lord John Russell moving a few nights afterwards, and carrying his resolution by a majority of 27 in a House composed of above 500 members, "That it is the opinion of this House that no measure on the subject of Tithes in Ireland can lead to a satisfactory and final adjustment which does not embody the principle of the foregoing resolution." On the 9th April Sir R. Peel resigned office, and on the 18th of the same month the list of Lord Melbourne's Cabinet was made public, Lord Brougham's name appearing in it, but not as a member of the Cabinet. The office assigned to the former Whig Chancellor was that of Lord Keeper and Chairman of the House of Lords. It is beyond the province of this Review to state more of Lord Brougham's Parliamentary history than is sufficient to serve as a guide and index to the legislative enactments which he may be said to have originated, and to illustrate the unremitting zeal displayed by him in promoting measures for the public welfare. Suffice it to say that his exclusion from the councils of his Sovereign did not damp his ardour, nor did he permit his private feelings to interfere in the slightest degree with his sense of public duty. On the 23rd May, 1835, he again brought forward the subject of Education, dwelling in his speech particularly on its advantages as a preventive against crime, and referring with much satisfaction to the system of infant schools then recently established.

appropriating the surplus revennes of the Irish Church to secular purposes.

Lord Melbourne returns to office, but Lord Brougham is no longer Chancellor.

His conduct on that occasion.

He again introduces a Bill on the subject of Education in a powerful speech.

"I consider," he says, "the institution of Infant Schools one of the most important improvements, I was going to say in the Education, but I ought rather to say in the civil

1835.

polity of this Country, that have for centuries been made. I believe no one who has had an opportunity of observing those institutions, will feel the least hesitation in assenting to this opinion; and in confessing how desirable it is that the system should be generally adopted. But I wish now particularly to call the attention of the House to the reasons of fact, on which alone the usefulness of Infant Education is established. I assert that we begin much too late in the education of children. We take for granted that they can learn little or nothing under six or seven years old, and we thus lose the very best season of life for instruction. Whoever knows the habits of children at an earlier age than that of six or seven—the age at which they generally attend the infant schools—whoever understands their tempers, their habits, their feelings and their talents—is well aware of their capacity of receiving instruction long before the age of six. The child is at three and four, and even partially at two years, and under, perfectly capable of receiving that sort of knowledge which forms the basis of all education; but the observer of children, the student of the human mind, has learnt only half his lesson, if his experience has not taught him something more. It is not enough to say that a child can learn a great deal before the age of six years; the truth is that he can learn, and does learn a great deal more before that age, than all he ever learns or can learn in all his after life. His attention is more easily roused in a new world—it is more vivid in a fresh existence—it is excited with less effort, and it engraves ideas deeper in the mind. His memory is more retentive in the same proportion in which his attention is more vigorous; bad habits are not yet formed, nor is his judgment warped by unfair bias; good habits may easily be acquired and the pain of learning be almost destroyed; a state of listless indifference has not begun to poison all joy, nor has indolence paralysed his powers, or bad passions quenched or perverted useful desires. He is all activity, inquiry, exertion, motion—he is eminently a curious and a learning animal, and this is the common nature of all children, not merely of clever and lively ones, but of all who are endowed with ordinary intelligence, and who in a few years become through neglect the stupid boys and dull men we see. The child when he first comes into the world may care very little for what is passing around him, although he is of necessity always learning something even at the first;

Intellectual progress of children.

1835.

but after a certain period he is in a rapid progress of instruction; his curiosity becomes irrepressible; the thirst for knowledge is predominating in his mind, and it is as universal as insatiable. During the period between the ages of eighteen months or two years and six, I will even say and five, he learns much more of the material world—of his own powers—of the nature of other bodies, even of his mind and of other minds, than he ever after acquires during all the years of boyhood, youth, and manhood. Every child, even of the most ordinary capacity, learns more, gains a greater mass of knowledge and of a more useful kind at this tender age, than the greatest philosopher is enabled to build upon it during the longest life of the most successful investigation. Even were he to live to eighty years, and pursue the splendid career of Newton or La Place, the knowledge which the infant stores up, the ideas which are generated in his mind, are so important that if we could suppose them to be afterwards obliterated, all the learning of a senior wrangler at Cambridge, or a first-classman at Oxford, would be as nothing to it, and would literally not enable its victim to prolong his existence for a week. This being altogether undeniable, how is it that so much is learned at this tender age? Not certainly by teaching or by any pains taken to help the newly-arrived guest of this world. It is almost all accomplished by his own exertions, by the irrepressible curiosity, the thirst for knowledge only to be appeased by learning or by the lassitude and the sleep which it superinduces. It is all effected by the instinctive spirit of inquiry which brings his mind into a perpetual course of induction, engaging him in a series of experiments which begin when he awakes in the morning and only ends when he falls asleep. All that he learns during those years he learns not only without pain, but with an intense delight—a relish keener than any appetite known at our jaded and listless age—and learns in one-tenth of the time which in after life would be required for its acquisition."—*Speeches*, vol. 3, pp. 233, 234.

Rapidity of acquisition and retention of knowledge by them very extraordinary.

Passing from Infant Schools to the subject of offences committed by the youth of both sexes only slightly removed from infancy, we find some profound observations upon the total inefficiency of Punishment

Inefficiency of Punishment as a means of reformation.

1835. as a means of correcting evil habits. At a period when the reformation of the young offender has been forced upon the national attention, the discontinuance of Transportation having rendered a policy expedient and even necessary, the adoption of which our sense of the moral and religious welfare of the people had failed to press upon us, the reflections of Lord Brougham upon the mode whereby vicious habits are yielded to or combated, and upon the organization of the criminal mind, are extremely valuable and interesting:—

Valuable remarks on this subject.

"It appears to me evident that all who have discussed the question of crime and punishment, have proceeded upon an erroneous supposition. They have all assumed, that a person making up his mind about committing an offence against the law, is a reasoning, provident, calculating Being. They have all argued on the supposition, that a man committing a robbery on the highway, speculates, at the moment of planning his expedition, upon the chance of being hanged for it; or that a man projecting forgery, is well aware of the punishment which awaits him, and feels a conviction that he shall suffer it. All reasoners upon this subject have gone upon the assumption, that the individuals who commit crimes, calculate beforehand the consequences of their conduct, as the merchant, in his counting-house, reckons on the chances of profit and loss in his speculations; or the farmer—(if indeed farmers ever calculate)—on the crops, the markets, and the seasons. That is the first mistake; but there is another not less detrimental to the argument. It is equally assumed, that the individual is, at the time of making the supposed calculation, unbiassed and free in his mind—that he considers the subject with calmness and deliberation—in short, that he is altogether in the same frame of mind in which we are ourselves, when devising the punishment for his offences—whereas he is almost invariably under the influence of strong excitement: he has lost his money at the gaming table, and is ruined if he cannot pay it or replace it—he ought to have calculated before he went there, and he might then have reasoned; but that is not the moment to which the penal denunciations are

The philosophy of crime.

1835.

addressed—he thinks not at all till he feels the consequences of his imprudence, and has debts to pay after his losses—has a family and station to support in spite of them; and then comes the question, what shall he do—and then he is supposed to count the risk of detection, conviction, and punishment, if he plunges into a course which will relieve him from his pressing embarrassments. In circumstances like these, I very much doubt his calculating at all; for what fills his whole mind is his ruined condition; he feels much; he fears much; and he is disordered in his understanding, by the vehement desire to escape from the endless difficulties into which his rash imprudence has hurried him. In such a frame of spirit he is little likely to pause and consider. But suppose him to calculate—his reckoning will not be so much of the amount of danger to be encountered by the criminal act, as of the utter ruin and disgrace in store for him if he be a defaulter. The truth is, that men rush on the commission of the greatest crimes, under the dominion of passions which lay their reason prostrate. The greatest of all enormities are invariably committed under the influence of mighty excitement. It is the madness of lust, and a rape is perpetrated—or the fury of revenge, and murder is done—or hatred is wrought up to frenzy, and houses are burnt or demolished; the stings of conscience being felt after the offence, and in the calm that succeeds the tempest of passion. Even offences of a more solid kind, those against Property, and which are more connected with speculation, are planned with such a desire of obtaining the things sought after, to supply some necessity, or gratify some propensity, that in estimating the risk of detection and punishment, hardly a thought is bestowed on those dangers; so that altogether very little reliance can be placed on the deterring influence of punishments, whether seen or only heard of. But if punishment is inefficient, I am sure that prevention is effectual. The schools which have already been established for children at the ages of seven, eight, nine, and ten, exhibit results consolatory as far as they go; but these are very ineffectual instruments of improvement compared with those which I wish to see established, where the child at the earliest age may be taken under the fostering care of the instructor,—where the acquisition of vicious habits may be effectually prevented, and the principles of virtue may thus early be instilled into the mind—where the

What influences criminals.

Prevention far better than punishment.

1835.

foundation may be laid for intellectual as well as moral culture, and where, above all, the habits of prudence, industry, and self control may be taught at a season when lasting habits are easily acquired. If, at a very early age, a system of instruction is pursued by which a certain degree of independent feeling is created in the child's mind, while all mutinous and perverse disposition is avoided,—if this system be followed up by a constant instruction in the principles of virtue, and a corresponding advancement in intellectual pursuits,—if during the most critical years of his life his understanding and his feelings are accustomed only to sound principles, and pure and innocent impressions, it will become almost impossible that he should afterwards take to vicious courses, because these will be utterly alien to the whole nature of his being. It will be as difficult for him to become criminal because as foreign from his confirmed habits, as it would be for one of your Lordships to go out and rob on the highway. Thus to commence the education of youth at the tender age on which I have laid so much stress, will, I feel confident, be the sure means of guarding society against crimes. I trust everything to habit—habit, upon which in all ages the Lawgiver as well as the Schoolmaster has mainly placed his reliance—habit which makes everything easy, and casts all difficulties upon the deviation from the wonted course. Make sobriety a habit, and intemperance will be hateful and hard—make prudence a habit, and reckless profligacy will be as contrary to the nature of the child grown and adult as the most atrocious crimes are to any of your Lordships. Give a child the habit of sacredly regarding truth—of carefully respecting the property of others, of scrupulously abstaining from all acts of improvidence, which can involve him in distress, and he will just as little think of lying, or cheating, or stealing, or running in debt, as of rushing into an element in which he cannot breathe."—*Speeches*, vol. 3, pp. 241, 242, 243.

This only to be attained by sound religious education.

Principles of honesty and truth must be instilled early.

Resolutions agreed to, but no Bill introduced.

A series of resolutions embodying the suggestions and recommendations made in this speech for the further promotion of Education, and Infant Schools especially, were moved by Lord Brougham at its close, but in consequence of the attention of Parliament

1836.

being engrossed by the state of parties, consequent on the late political changes, he introduced no Bill upon these questions: the same topics were, however, very forcibly urged by him in an address to the members of the Manchester Mechanics' Institution on the occasion of a meeting at which he presided in that town on the 21st July in that year.* He continued to hold his anomalous position as Chairman of the House of Lords, without a seat in the Cabinet, until the 15th January, 1836, when Sir Charles Pepys, Master of the Rolls, was appointed Lord Chancellor, and took his seat upon the woolsack when Parliament met on the 4th February, with the title of Lord Cottenham. From that period all connection between Lord Brougham and the Melbourne Administration terminated. We are henceforth to regard him in an independent position, unshackled by official restraint, and devoting, without party bias, the powerful energies of his intellect to purposes having for their object the advancement of the general good, a determined enemy of abuses in whatever political soil they may have been fostered, and giving a generous and cordial support in his place in the Legislature to the Councils of his Sovereign, whatever may have been the ingredients composing them, where in his judgment the measures of the Government have been characterized by progressive, but temperate reform. Brilliant as had been the career of Lord Brougham antecedently to this period, prominent as had been the position he had occupied in the public eye by his eloquence and talents,

Sir Charles Pepys becomes Lord Chancellor.

Lord Brougham's connection with the Cabinet of Lord Melbourne ceases.

Observations on his conduct as a statesman since that period.

* Speeches, vol. 3, p. 155.

1836. the course he has pursued as a legislator and a statesman since the close of his official life, has been far more fruitful of benefit to his country, than if he had lavished that eloquence and those talents, upon the advancement of personal ambition, or the unprofitable issue of political strife. While others have enjoyed the cheers of temporary popularity, he can point to the Statute Book as the silent but durable monument of his fame; while many, his inferiors in capacity, have basked in the sunshine of courtly favour, he has toiled long and disinterestedly in his country's service with no other prospect or expectation than that of winning its esteem.

CHAPTER V.

Introduction of Bills on Education—Local Courts Bill again introduced, 1837—Speech on Negro Apprenticeship—Bills on the subject of the Slave Trade—Anecdote of a Slave Proprietor—Bribery Bill introduced—Acts relating to the Privy Council and Patent Laws—Institution of the Law Amendment Society—Passing of the Local Courts Bill—Report of the Select Committee of the Lords on Transportation and the punishment of Crime—Prison discipline—Solitary, Separate, and Silent systems—Treatment of juvenile offenders—Employment of Convicts—Liberation of Convicts after punishment—Capital punishments—Advantages of Moral and Religious Training—Great Speech on Law Reform, 12th May, 1848—Laws—the makers of them—the way in which they are made—their promulgation and their administration—He passes in review the defective state of each department.

THE retirement of Lord Brougham from his place in the House of Lords, which occurred soon after his secession from the Ministry of Lord Melbourne, was not of long duration. In 1837 we find him on the 1st of December moving the first reading of his Bills on Education, which will be hereafter adverted to in the Summary prefixed to the list of Acts and Bills relating to the subject. These Bills, although opposed in their principle to any compulsory system of Education, first suggested the idea, since adopted and carried into practice, of encouragement and control on the part of the Government, by a Board emanating from it. They also proposed the novel plan of giving the Parliamentary Franchise to the most proficient pupils. An Extension of the Suffrage, based upon an Educational Qualification, as distinguishable from that of property or numbers, will probably be the portion of any future Reform Bill most acceptable to the country. With regard to the religious instruction to be fur-

1837.

Educational Franchise first proposed by Lord Brougham.

1837. nished in the schools, the impediment hitherto to all comprehensive schemes of Education, Lord Brougham made on this occasion the following remarks:—

No education valuable unless based on Religious instruction.

"That there should be any clause in a measure of this sort, excluding Religious instruction, no man in his sober senses could ever for a moment dream. That there should be no exclusion of Religious instruction, but that, on the contrary there should be a direct recognition of it, is my very decided opinion. I certainly am one of those who think that the Bill should contain in positive and express terms a provision, that in all schools founded, extended, or improved under the Bill, the Scriptures shall be read. Accordingly, I have inserted a clause to that effect. When I say that the Scriptures are one of the books which should be read in these schools, I of course mean that it should not be the only book read there, far from it: God forbid!—for the sake of Religion and of the Bible itself, God forbid! —but that, as a part of the reading in such schools, the Holy Scriptures should be used, with a proviso, of course, that any children of Jewish or Roman Catholic parents, attending such schools, shall not be required to be present when the authorized version is read, unless the parent shall desire it, is my clear opinion, and I have framed the provision upon it. I have no doubt that this is fit and proper to be added to the Bill; and I am certain that it will still all differences upon the subject of a National System of Education."—*Speeches*, vol. 3, pp. 312, 313.

The Local Courts Bill once more introduced.

We must not forget to mention that Lord Brougham again introduced his Local Courts Bill on the 20th of February, 1837, but without success. In the following year he delivered his celebrated speech on the immediate Emancipation of Negro Apprentices.—(*Speeches*, vol. 2, p. 185). The resolutions which he then moved were negatived by a majority of 27.

Speech on Negro Apprenticeship.

Nevertheless the power of language displayed by him on that occasion, and the powerful chain of reasoning with which he supported his arguments, afforded a most convincing proof that the rumours for some time

industriously circulated respecting the impaired state of his health were entirely without foundation. The interval which occurred between the period we are speaking of and 1848, when he made his second great Speech on Law Reform, furnished us with the record of many important statutes carried and owing to him their authorship or their conduct through the Legislature. Not a Session of Parliament but bears testimony to his capacity for amending and perfecting our jurisprudence. During that of 1837 he had introduced Bills to prevent the holding of Pluralities by the Clergy, and to enforce more strictly their residence upon their benefices. The same year witnessed another attempt to succeed with the Local Courts Bill, and with that for Promoting and Extending Education in England and Wales. The latter Bill contained a proviso empowering Boroughs to rate themselves for the purposes of education. None of these attempts were, however, successful. In the year 1839 Lord Brougham again brought forward, and with no greater success, two Bills having reference to the same subject, one for Regulating Charities, and the other almost identical with the Bill of 1837. He was more fortunate with a Bill introduced upon the subject of the Slave Trade, that nefarious traffic being still carried on to a great extent under colour of the Portuguese flag. The statute 2 & 3 Vict. c. 73,* authorized Portuguese vessels engaged in the Slave Trade, and other vessels not being justly entitled to claim the protection of the flag of any other State, to be detained, captured, and brought to adjudication in any of her Majesty's Courts established for this

1837.

Bill for preventing the holding of Pluralities by the Clergy.

1839.

* Act for the Suppression of the Slave Trade.

1839.

Alteration of the term assigned for the expiration of Negro Apprenticeship.

purpose. In 1838 his efforts in the House of Lords already alluded to, had greatly tended to influence the Government and the Colonial Assembly in terminating the period of Negro Apprenticeship, and allowing it to expire on the 1st of August, 1838, instead of 1st of August, 1840, as had been originally fixed by the Act of 1833. It may here be mentioned that Lord Brougham's uncompromising hostility to the Slave Trade was the cause of his losing two estates of considerable value, one in Barbadoes and the other in the North of England. The owner, a West Indian and large Slave Proprietor, had made Lord Brougham his heir, but on finding him a determined enemy of Negro Slavery he altered his will. Speaking of these estates, he had, before the alteration, observed in a letter to the intended Slave Proprietor, "Your peasantry in Barbadoes are more comfortable than your peasantry in England."

Anecdote of a Slave Proprietor.

1840.

Bills to amend proceedings in Equity.

In the year 1840, with the co-operation of Lord Cottenham, then Lord Chancellor, he carried the stat. 3 & 4 Vict. c. 94,* by which proceedings in Equity were much simplified and facilitated, and some useless and expensive offices were abolished. In 1841 he brought in his Bill for the removal of those difficulties and complications which surrounded copyhold tenure; but the most important clauses of his Bill, viz., those making copyhold enfranchisement compulsory under certain conditions, were struck out in the select committee of the Lords, and the Bill, being further curtailed in the Commons, constitutes the statute 4 & 5

* Act for facilitating the Administration of Justice in the Court of Chancery.

Vict. c. 35, amended since by the 6 & 7 Vict. c. 73, and 7 & 8 Vict. c. 55. In 1842 the Local Courts Bill was again, for the fourth time, introduced, but met with the same fate as before. Nevertheless, in that year Lord Brougham succeeded in passing a most important measure viz., the Insolvent Debtors Act,* 5 & 6 Vict. c. 116, and also the Act abolishing Arrest on mesne process, 5 & 6 Vict. c. 120, thus depriving the creditor of a privilege, which in that stage of the proceedings against the debtor he had uniformly denounced as arbitrary and unjust. Bribery at elections formed the subject of a Bill also introduced in 1842, which contained a provision for indemnifying witnesses examined before a committee similar to that which is to be found in the 15 & 16 Vict. c. 57. Several very important measures passed the Legislature in 1843, having Lord Brougham for their author. First of these may be mentioned the stat. 6 & 7 Vict. c. 98,† by which Slave Trading by British subjects in foreign countries was declared to be felony. So lucrative was this detestable traffic, that every attempt was found to be made to evade existing enactments and restrictions. The same observation applies to the present time, when the trade flourishes notwithstanding every endeavour to suppress it, and even while our cruisers are watching every creek and inlet of the African coast. It is only now beginning to be discovered, that the approach to the slave purchasing districts must be guarded no less carefully than the territory which furnishes the slaves, if we would effectually cut off the supply. Another important act carried in the session of 1843 was the

1842.

Local Courts Bill.

Introduction of a Bribery Bill.

1843.

Privy Council.

* Act for the Relief of Insolvent Debtors. 1842.

† Act for more effectually suppressing the Slave Trade. 1842.

1843. stat. 6 & 7 Vict. c. 38, by which the powers of the Judicial Committee of the Privy Council in respect to the trial of appeals from the Ecclesiastical and Admiralty Courts were greatly enlarged. We may also mention the stat. 16 & 17 Vict. c. 73,* to amend the Law of Coroners, and Lord Campbell's Libel Act, 2 & 3 Vict. c. 73, which, however, fell very short of the propositions made by Lord Brougham, inasmuch as the allegation of the truth of the matter alleged to be libellous in defence, is made applicable to private indictments, and does not extend to prosecutions or informations for libel upon the Government. We must not omit to advert to a statute most important to jurisprudence which passed the Legislature in this year, and for which the country is indebted to Lord Denman, viz., the 6 & 7 Vict. c. 85, for establishing the competency of witnesses interested in the suit at issue. This was the first step to the far more comprehensive measure carried by Lord Brougham in 1851, when parties were enabled to be witnesses on the trial to establish their own case. In 1844 we have to ascribe to Lord Brougham two useful statutes, viz., the 7 & 8 Vict. c. 69, whereby inventors and assignees of patent inventions were enabled to obtain from the Judicial Committee of the Privy Council† an extension

Lord Campbell's Libel Act.

Lord Denman's Act for establishing the competency of witnesses.

Improvement of the patent laws.

* Act to amend the Laws respecting the duties of Coroners. 1843.

† It may here be mentioned, that on the accession of Sir Robert Peel's Ministry to power in the Autumn of 1841, Lord Brougham was urged by the Lord Chancellor (Lyndhurst) to accept the permanent office of Vice President of the Judicial Committee of the Privy Council, which it was proposed to establish, with an adequate salary. He however declined the offer. Lord Lyndhurst, in the Debates in the Lords on the Appellate Jurisdiction in April 1842, expressed his regret that he had not been able to prevail upon his noble Friend to accept the appointment.

of their term without the expence and delay which attended the obtaining of an Act of Parliament; the other the 7 & 8 Vict. c. 70, by which debtors were enabled more easily to make arrangements with their creditors, in the event of their vesting in the latter the whole of their estates, protection from arrest meanwhile being given to the debtor, even after judgment and execution. It was in this year that Lord Brougham first introduced his Bill for the protection of title by means of a Declaratory Suit, a measure imported from the Scotch jurisprudence, and sounding of the sensible character which pervades many of the institutions of that country. When Lord Brougham delivered his second great speech on Law Reform in 1848, it will be found that he dwelt forcibly upon the beneficial effects which would result from the action by way of Declaratory Suit being made part of our laws.

1844.

Bill for protecting title by a declaratory suit.

We now approach a year in which the activity and energy of Lord Brougham appear to have reached their climax, viz., the year 1845. It must be observed that he had now the powerful aid and co-operation afforded by the Law Amendment Society, of which he had in January of the preceding year laid the foundation in conjunction with Mr. James Stewart, then member of Parliament for Honiton, and the framer of the copyhold bills, which afterwards passed the Legislature. The idea of the Law Amendment Society originated with him, although Lord Brougham gave great assistance in establishing and carrying it out. Of nine Bills brought in by him in connection with Law Reform, three resulted from Reports of the So-

1845.

Mr. James Stewart.

1845. ciety on real property conveyance and leases, and on outstanding terms, and were in a great measure prepared by Mr. Stewart. They all passed the Legislature in the session of 1845, and are respectively the statute 8 & 9 Vict. c. 119, 8 & 9 Vict. c. 12, and 8 & 9 Vict. c. 124. The other six Bills were generally approved of by the Society, but did not originate with it. They were the following: 1st, a Bill to enable the parties to a cause to be examined,—this was the first occasion when so material an alteration of the existing law was attempted to be made: 2nd, a Bill to make official documents produced from places of proper custody, and private Acts of Parliament printed by the Queen's printer, evidence in Courts of law and equity without further proof,—this is the stat. 8 & 9 Vict. c. 113: 3rd, a Bill to extend jurisdiction to the Judicial Committee in matters of divorce: 4th, the Bill previously introduced to establish a declaratory action: 5th, a Bill to authorize Parliament to order parties applying for local and personal bills to give recognizance for costs to the opponents of such measures. This Bill passed the Lords, but was dropped in the Commons: 6th, a Bill for securing the real independence of Parliament, by depriving the members of both Houses, in the event of judgment having been obtained against them, of their privilege of exemption from personal arrest. This Bill was again introduced in 1848, but could not stem the opposition that encountered it. In addition to these nine Bills there were one or two others of general interest. One, was to enable all persons to trade within the city of London, and another to amend the law of marriage, rendering

Nine Bills introduced by Lord Brougham in the Session of 1845.

Bill for securing the real independence of Parliament.

a residence of three weeks in Scotland a necessary preliminary to a valid union in that country. Neither of these Bills passed the Legislature. 1846.

The year 1846 saw the termination of the opposition which had so often successfully stood in the way of the introduction of one of the most important measures of Law Reform, viz. the return to Courts of local judicature, first instituted by our Saxon ancestors, but from which business had gradually flowed away into the superior Courts. Lord Lyndhurst had taken charge of the Local Courts Bill, but Sir Robert Peel's Administration having succumbed before the desertion of his own party consequent upon his change of opinion on the subject of the Corn Laws, it was carried under the auspices of the Government of Lord John Russell. Sixteen years had elapsed since Lord Brougham, then in the House of Commons, had propounded his Scheme, and during the long interval that succeeded before it ultimately became law, he had met with lukewarm support from his own party. That the Whigs cared little for the institution of Local Courts, is manifest from the fact, that when it was afterwards proposed to extend their jurisdiction to £50, the Attorney General of the day opposed the measure, but it was carried, notwithstanding the Government opposition, through the energy and perseverance of the late Mr. Fitzroy, one of the staunchest advocates and supporters of the County Courts.

The Local Courts Bill at length successful, during the Premiership of Lord John Russell.

The Act of 1846 (9 & 10 Vict. c. 95) was a necessity submitted to the exigencies of public opinion, by this time almost unanimous in favour of the measure. Three other Bills were introduced by Lord Brougham

Measures respecting real property introduced by Lord Brougham.

1847. in 1846: the first, to facilitate the conveyance of real property, in the same manner as the statute 8 & 9 Vict. c. 124* had enacted respecting leases, by the substitution of shorter and simpler phraseology for the cumbrous and prolix terms used in conveyancing; the second to secure the more impartial trials of offences in Ireland by authorizing the trial to take place in a different county from that in which the crime should have been committed, and the third to protect from vexatious actions persons in the discharge of public duties. The last Bill only passed the Legislature, but not in that year. When again introduced in 1847 the protection was restricted to magistrates, and thus became the statute 11 & 12 Vict. c. 44.† In 1847, Lord Brougham was engaged in the consideration of one of the most momentous questions affecting our jurisprudence,—we allude to the share he took in framing the Report upon the execution of the Criminal Law, particularly as regards Transportation and the treatment of Juvenile Offenders, having been Chairman of the select committee of the Lords appointed to receive evidence on this subject during part of two sessions. On the momentous questions of Imprisonment, Transportation, the state of our Penal Colonies, the treatment of our convict population abroad, capital punishment, Education as a moral preventive against crime, the Committee received with attention the testimony of men of the longest and most profound experience, including almost all the learned Judges of

Report upon the administration of the criminal law.

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Lord Brougham Chairman of the select committee of the Lords.

* Act to facilitate the granting of certain leases. 1845.

† Act to protect justices of the peace from vexatious actions for acts done by them in execution of their office. 1847.

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the three kingdoms. The volume containing their evidence is one of the most valuable documents ever presented to Parliament, while the Report itself, containing in firm and simple language the conclusions of the Committee and their Chairman, arrived at after mature consideration, is well worthy of an attentive perusal by the legislator and the philanthropist.

The Report well worthy of an attentive perusal.

SECOND REPORT.*

BY THE LORDS COMMITTEES appointed a SELECT COMMITTEE to inquire into the Execution of the CRIMINAL LAW, especially respecting JUVENILE OFFENDERS and TRANSPORTATION; and to whom Leave was given to report from time to time to the HOUSE; and to whom was referred the Petition of the Justices of the Peace of the Borough of Kingston upon Hull praying for the Appointment of a Committee to inquire into the State of Criminal Offenders, more particularly Juvenile Offenders, with a view to ascertain the best Means for their Reformation and for their Restoration to Society, and to whom were also referred several Papers in relation to the above matters:—

ORDERED FURTHER TO REPORT,

THAT the Committee judged it expedient, for the greater despatch of the business, and the more satisfactory consideration of the subject, to sit for some time from day to day, and to prepare questions which might both be circulated among those whose public duties rendered their attendance on the House inconvenient, and might also serve as the groundwork of the examination of the witnesses who attended.

A great number of persons have accordingly been examined:—Recorders of Cities and Boroughs, Judges of

Examination of witnesses of profound learning and great experience.

* The important questions treated of in this Report, especially those of Secondary Punishments and the employment of Convicts, were fully analyzed and discussed in a Letter addressed by the Author to Lord Brougham in January 1857, and published under the title of "The Legislative Requirements of the (then) coming Session." Longman. 1857.

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local Jurisdiction, Magistrates, Governors and Chaplains of Gaols and Penitentiaries, Prison Inspectors, and others having the care of Convicts at home and in the Penal Colonies. Answers to the questions circulated have likewise been obtained from thirty-three learned Judges of the United Kingdom exercising criminal jurisdiction; namely, fourteen of the Judges of England, the fifteenth having only been recently appointed, the twelve Judges of Ireland, and the seven of the High Court of Justiciary in Scotland, and the late Lord President Hope, formerly Lord Justice Clerk. The Committee have likewise obtained valuable information from foreign Countries, and especially by correspondence with the Ministers and Judicial Officers of France. The whole body of this Evidence and Information they have reported to the House, and they now beg leave to preface it with the following Statement touching its import, and some suggestions arising from the consideration of it.

The Committee have found a great concurrence of opinion among all Judges and all persons conversant with Prisons, and generally with the execution of the Criminal Law, upon some very important points.

Transportation cannot be dispensed with.

In the *first* place, nearly all are agreed that the Punishment of Transportation cannot safely be abandoned; that it has terrors for offenders generally which none other short of Death possesses; that no such fear attends Imprisonment, especially for hardened offenders; that no hope exists of Imprisonment being so far rendered more formidable as to supply in all respects the place of Transportation. There prevails some slight difference of opinion, but more in appearance than reality, as to what classes of Criminals dread it the most; for when one or two of the witnesses state that prisoners in a superior station, as Merchants' or Bankers' Clerks, or persons in the Law, convicted of forgery, would prefer being sent abroad because they are observed, when under sentence of Imprisonment, to have a peculiar fear of being seen and recognised, the same witnesses allow that these individuals, if imprisoned in places where they are unknown, would deem the punishment much less heavy than Transportation. The evidence all plainly points to the conclusion that this punishment has peculiar terrors for such persons, and there is only one opinion given by all the witnesses, or rather one fact stated by them, as to receivers of stolen goods, by whom Transportation is dreaded in an extreme degree.

On Transportation as a punishment.

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It ought, however, to be observed, that the degree of weight which may be given to the Evidence generally, or to the testimony of particular witnesses, in any discussion upon the Administration of Criminal Justice, must depend in great measure upon the answer to another question, viz., what particular mode of executing the sentence, either of Transportation or of Imprisonment, is in the contemplation of the witness or of the persons whose opinions he professes to give.

There can be little doubt that a sentence which imports an entire separation for life, or for a very long period, from his criminal associates and from his family, must have a greater degree of terror for an offender than any Imprisonment at home which holds out the hope within a shorter period of rejoining his family, and renewing all his criminal associations. But, before forming any sound opinion upon the relative merits of these different modes of Secondary Punishment, it would be necessary to clearly understand and fully to consider all the details through which either one or the other is to be carried into execution.

Upon the subject of Transportation nearly all the learned Judges are clearly and strongly of the same opinion; they consider that it would be extremely unwise to abandon it.

On imprisonment as a punishment.

Secondly.—That Imprisonment as usually practised is not an efficacious punishment, though accompanied with Hard Labour, and with Separation or with Silence, as it is in some prisons, is likewise the result of the evidence. Only those who undergo it for the first time appear to feel it much; this suffering soon wears off. A second commitment finds the criminal by no means unprepared to undergo it, and it ever after ceases to exercise a deterring effect. The number of times that young offenders have been committed, some of them twelve or fifteen times within a few years, seems strongly illustrative of this position; whereas convicts returned from Transportation, either by escape or by expiration of their sentences, regard with the utmost terror the repetition of that punishment.

How far Imprisonment can be so far altered as to be efficacious, either as preparatory to Transportation or as a punishment by itself, is a question of difficulty, upon which little evidence could be given, inasmuch as no sufficient experience has yet been had of the improved systems which are now in partial operation.

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Solitary confinement and the separate system.

Thirdly.—The evidence all tends to shew the great importance of improving our Prison Discipline. Solitary Confinement ought on no account to be inflicted beyond a very short time, as three or four weeks, with a considerable interval after each week, and only two or at most three weeks during a period of eighteen months or two years. Its effects on both the bodily and mental health are such as plainly to prescribe these limits.

The Evidence also establishes an important distinction between Solitary Confinement and the discipline of the Separate System. For the cure of moral evil time is so essential a condition that any system incapable of being long continued must fail of attaining its object. For this reason Solitary Confinement, which cannot be prolonged without injury to the prisoner, must fail. The Silent System, as it has been termed, *i. e.*, criminals working together in silence, is objectionable as leading to a multiplicity of gaol offences, and inefficient as wanting that power of forcing men to commune with themselves, which criminals especially dread and require. The Separate System, where it has been fairly tried, seems to supply exactly what is needed, forcing the mind to self-communion, and allowing this to be broken only by communication with those morally the superior of the convict. Nor does this system, on the balance of the Evidence, appear to the Committee to be inconsistent with the health of the prisoners in body or mind, although on this last point there is a difference of opinion, some witnesses regarding this discipline as hurtful, not indeed to the structure and functions of the understanding, but to the energies of the will. On this subject the Committee would recommend, first, that great care be taken in administering the system of Separate Confinement with Labour, and secondly, that the number of prisons adapted to the practice of it be multiplied.

The silent system, why objectionable.

Treatment of juvenile offenders.

Fourthly.—The Evidence throws some light upon the treatment of young offenders. That the contamination of a gaol, as gaols are usually managed, may often prove fatal, and must always be hurtful to boys committed for a first offence, and that thus for a very trifling act they may become trained to the worst of crimes, is clear enough. But the Evidence gives a frightful picture of the effects which are thus produced. In Liverpool, of fourteen cases selected at

random by the Magistrates, there were several of the boys under twelve, who in the space of three or four years had been above fifteen times committed, and the average of the whole fourteen was no less than nine times. The opinions of competent judges, especially on the Bench, vary as to the expediency of giving to Magistrates a power of summary conviction in such cases; but the inclination of opinion is in favour of confining this to professional persons exercising judicial or police functions; or if two ordinary Justices should be entrusted with it, to interposing the check of a jury, composed, however, not of twelve but of three or four persons. It is also the very general opinion that Magistrates may safely and advantageously be armed with a power of discharging for slight offences, upon taking the recognizances of parents or masters for the good behaviour of the party. Important Evidence will be found in the Appendix, especially from Birmingham and Manchester, in favour of a judiciously exercised discretion in discharging boys, especially when apprehended for the first time. The principal difficulty of giving a Summary Jurisdiction arises from the difficulty of fixing a limit in point of age, and of ascertaining in each case that the party comes within the line. But the Committee are strongly inclined to think that much of this might be got over, even without appointing special Justices, by enabling Magistrates in petty sessions to exercise the summary power, with the previous consent of the parties themselves to submit to such tribunal, confining the jurisdiction to certain offences, and the punishment to six months imprisonment, with or without labour, or to the infliction of whipping in the presence of certain appointed officers, with or without such imprisonment.

Summary jurisdiction to be given to Magistrates.

The question of Punishment of Juvenile Offenders is a further and distinct one beside that of the jurisdiction and power of conviction in their case. Very important Evidence has been given in favour of dealing with such offenders, at least on first convictions, by means of Reformatory Asylums on the principle of Parkhurst Prison, rather than by ordinary imprisonment; the punishment in such Ayslums being hardly more than what is implied in confinement and restraint, and reformation and industrial training being the main features of the process. Without going beyond the principle which should be followed on this question, the

Reformatory Asylums.

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Committee are disposed to recommend the adoption, by way of trial, of the Reformatory Asylums as above described, combined with a moderate use of corporal punishment. The Committee also recommend the trial of a suggestion made by witnesses who have given much attention to this subject, that, wherever it is possible, part of the cost attending the conviction and punishment of juvenile offenders should be legally chargeable upon their parents.*

Cost of reformation to be chargeable upon parents.

Public working of convicts.

Fifthly.—The working of Convicts exposed to public view is condemned by most of those who have been consulted or examined, as a practice tending to harden the offender, as revolting to the feelings of the community, and even as calculated to excite a feeling in the convict's favour. The French Authorities have with great courtesy and candour communicated to the Committee valuable information upon this subject; and this information, corroborated by a witness examined upon the state of the Bagnes or places of Forced Labour in France, leads to a very unfavourable opinion respecting this punishment as there conducted.

Employment of convict labour.

It is moreover clear upon the Evidence that this kind of working would tend to undo the effects of any reformatory system which might be adopted prior to such working.

The objections, however, to this practice are materially diminished, if the convicts be employed in remote and comparatively unpeopled "districts," such as may be found in some of the Colonial Possessions of the Crown, or in other situations, where the labour of convicts may be employed without all the evils attendant upon working under the public gaze.

Difficulty of making it public in Ireland.

Sixthly.—Witnesses of the most competent authority from Ireland are of opinion that the system of employing large bodies of convicts together in the public view could not be adopted with safety in that country, where the sympathy of the mass of the people would be in favour of the criminal, especially in all cases of agrarian crimes, and that it would be consequently necessary to transfer to England all Irish

* This has been effected by the Acts 17 & 18 Vict. c. 86, and the 20 & 21 Vict. c. 55, the latter passed in 1857.

By the 8th section of the 20 & 21 Vict. c. 55, parents are made liable to contribute a sum not exceeding 5*s.* per week for the support of their children in Reformatory Asylums. The Industrial Schools Act, 20 & 21 Vict. c. 48, has a similar provision, the amount being not to exceed 3*s.* per week.

criminals destined to be employed on Public Works, in case this mode of punishment were adopted. 1848.

Seventhly.—There is almost entire unanimity in opinion against Imprisonment for Short Terms. There is no prospect of the reformation of any class by such punishments, while their tendency is certain to accustom young offenders to the infliction, and thereby to lessen its deterring effects. If, however, it is found in the administration of the Criminal Law that short imprisonments must still be inflicted, the Committee see no reason why Solitary Confinement should not form part of such sentences, subject to the formerly stated limitation in respect of time. Short imprisonments.

Eighthly.—The Evidence, both from France and elsewhere, of the evil effects produced by the liberation of many convicts yearly as their terms of imprisonment expire, would seem strongly to inculcate the necessity of obviating the great inconvenience of setting at liberty in this country on the expiration of their sentences those who had once been convicted of serious crimes. Liberation of convicts after expiration of sentence.

It appears that Christiana, the Capital of Norway, is so injuriously affected by the proportion which the liberated Convicts bear to the population—nearly one in thirty—that the inhabitants have been called upon by the police to provide the means of their own security from such persons. In France, where between 7,000 and 8,000 convicts are liberated yearly, the superintendence of the Police (*Surveillance*), and the compulsory and fixed residence of the convict, are found very insufficient, especially since the invention of Railways. The residence of the liberated convicts is found to be a permanent danger to society. The system of Imprisonment (*Reclusion*), or of the Bagnes or Travaux Forcés, is of little effect in reforming, or even in deterring from a repetition of the offences punished, and the proportion of those recommitted for new offences is not less than thirty per cent. Thus of about 90,000 persons tried in the whole kingdom, above 15,000, or one-sixth of the whole number, had already suffered imprisonment, to say nothing of the corrupting effects produced on the community even by those who escape a second punishment.

Looking to these facts, the Committee are of opinion that the punishment of Transportation should be retained for serious offences; that such punishment should in some cases be carried into effect immediately, in others at a later period; that the first stages of the punishment, whether Retention of transportation necessary.

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carried into effect in this country or in the Colonies, should be of a reformatory as well as of a penal character, and that the later stages at all events should be carried into effect in the Colonies, the convict being for that purpose retained under that qualified restraint to which under the existing system of Transportation men holding tickets of leave or conditional pardon are subjected.

Under certain limitations.

The particular spots to which convicts may be thus sent, and the degree of superintendence to which it is expedient that they should for a limited time be subjected, are matters requiring the most attentive consideration of the Government, with whom much discretion respecting them must of necessity be left; they will have to make their decision upon these points from time to time according to the varying circumstances of different localities, such as the state of the labour market and the moral condition as well as the feelings and wishes of the Free Colonists.

Whether our Colonies would receive convicts after reformatory discipline.

The papers lately presented to Parliament and referred to the Committee lead to the inference that in many parts of our Colonial Possessions there will be a readiness to receive and employ convicts after they have undergone a period of reformatory discipline either at home or in the Colonies. The accounts received of the behaviour of the prisoners sent out from Pentonville and Parkhurst, and the opinions expressed in the Colonies respecting them, are very encouraging on this point.

The Committee must not be supposed to have either overlooked or underrated the alarming state of crime and depravity which appears to have arisen in parts of the Australian Colonies, but they think that these evils might be remedied by alterations in the Police, the Penal, the Religious, and the Moral system to which the convicts, after undergoing reformatory discipline either at home or in the Colonies, are subjected, together with such measures as would remedy the existing disproportion of the sexes in the Colonies.

Capital punishment cannot be dispensed with.

Ninthly.—Respecting the expediency of abolishing Capital Punishments the Committee found scarcely any difference of opinion. Almost all witnesses, and all authorities, agree in opinion that for offences of the gravest kind the Punishment of Death ought to be retained. But the Committee find considerable difference of opinion upon the deterring effect of Punishment generally. But it is remarkable that those who have actual intercourse with convicts are they

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who feel the least sanguine as to this deterring or exemplary effect of penal infliction, and who lean the most to make trial of punishment as affording the means of reformation. The experiment that has been tried at Stretton-on-Dunsmore in Warwickshire for above twenty-eight years, and similar experiments at Horn near Hamburgh, and at Mettray* in France, and eleven other Establishments in imitation, during the last eight years, afford a highly gratifying view of the efficacy of reformatory discipline, especially upon young offenders.

Deterring effects of punishment.

Lastly.—Upon one subject the whole of the Evidence and all the opinions are quite unanimous—the good that may be hoped from Education, meaning thereby a sound moral and religious training, commencing in Infant Schools, and followed up in schools for older pupils: to these, where it is practicable, *industrial training* should *be added.* There seems in the general opinion to be no other means that afford even a chance of lessening the number of offenders, and diminishing the atrocity of their crimes.

Committee unanimous on supreme importance of sound moral and religious training.

The Committee, therefore, deem that they should not be discharging their duty if they did not earnestly press these momentous subjects upon the attention of the Legislature. Without raising any speculative question upon the right to punish those whom the State has left in ignorance, it may safely be affirmed that the duty of all rulers is both to prevent, as far as may be possible, the necessity of punishing, and when they do inflict punishment to attempt reformation. The Committee, therefore, strongly recommend the adoption of effectual measures for diffusing generally, and by permanent provisions, the inestimable benefits of good training and of sound moral and religious instruction; while they also urge the duty of improving extensively the discipline of the gaols and other places of confinement.

And the Committee have directed the further minutes of Evidence taken before them, and the answers of some of the Judges to certain questions submitted to them in writing by the Committee, together with an Index and Appendix to the whole of the said Evidence, to be laid before your Lordships.

* The Humane and Philanthropic Founder and Conductor of the Institution at Mettray, Monsieur Demetz, has been within the last few weeks disabled by Paralysis, induced in a great measure by his devotion to his arduous labours in this noble cause.

1848. In 1848 Lord Brougham brought into Parliament two measures. One of these having for its object the release of debtors from prison, in cases where no fraud nor reckless extravagance had characterized his conduct, and where reasonable expectation had existed, at the period of his obtaining credit, that he should be able to discharge his liabilities, passed the Legislature and became the 12 & 13 Vict. c. 86. The other, intended for the protection of women from those who, for purposes of lucre, sought their defilement, although unsuccessful when introduced, was afterwards incorporated with a Bill on the same subject, brought in by the Bishop of Oxford, who usefully extended its provisions, and it thus constituted the statute 12 & 13 Vict. c. 76.*

The Debtors' Release Act.

Bill for protection of women.

Lord Brougham's great effort, however, in the cause of Law Reform in 1848, was his speech delivered on Friday, the 12th May, in that year, when he took a comprehensive review of the amendments which had been effected since he made his first statement on the subject in 1828, and drew the attention of the Upper House to what still remained to be accomplished,—"The changes effected in our jurisprudence," he remarks in the outset of his address, "have removed a large portion of the defects which I complained of twenty years ago: and as the whole have not been removed, I feel that the time has now arrived for urging Parliament to finish the important work thus happily begun, as well as to embrace in its amending operations, cautiously and safely, though steadily

Speech on Law Reform.

Review of improvements since 1828.

* Act to protect women from fraudulent practices for procuring their defilement. 1849.

carried on, those few branches of the subject to which my motion, in 1828, had not been directed. The past success naturally holds out this encouragement; the interval that has elapsed, too, enables us to tell, by the experience afforded by our changes, how far these have worked well in practice; and we may conveniently and usefully now pause to decide whether or not the measures adopted have been wisely framed, and whether or not we should not go on in the same course." Such, said the noble and learned lord, was his reason for now instituting this inquiry. He then proceeds to arrange and distribute his subject under the following heads:—1st, as to the makers of our Laws; 2ndly, the mode in which they are made; 3rdly, the fabric when made; 4thly, the promulgation of the Law; 5thly, its Administration. It would be foreign to the purpose of this Review to set forth at length the arguments and reasoning of Lord Brougham applicable to these several heads. We shall proceed to select such topics under each, as appear to be most interesting and most worthy of comment as adapted to the present time. First, as regards the makers of our Laws, he admits, from example of neighbouring States, that a large increase of the Constituencies may be made with safety and success. He added that the conduct of our own population at the very period when he was speaking, almost universally and certainly quite voluntarily enlisted on the side of order and in defence of the laws, had justly entitled them to claim a larger share in the Representation. "I derive," he says, "from the elections in France the most sanguine hopes, that many years may not be suffered to elapse

1848.

Fivefold division of his subject.

Extension of the electoral franchise.

1848. before we too extend our Elective Franchise to the great body of our citizens—the very source of our wealth and the pillar of our strength as a nation—men whose virtues are equal to their industry—men whose steady attachment to the Government and its Rulers, bids defiance to all the attempts ever made to seduce them from their allegiance." The question at the present time is one of absorbing interest, in consequence of the promise given by the first minister to introduce a measure of Parliamentary reform in the present session (1860.) Lord Brougham himself, in a speech delivered in the House of Lords during the year 1857, pointed out the direction in which the elective suffrage may be most extended with the greatest safety to our constitution, viz., by imparting into it more largely the Educational element. The writer of this Review, in pamphlets published in 1853 and 1858,* pointed out the advantages which would accrue to legislation from the greater independence of thought and action to be found in voters qualified by moral and intellectual acquirements, and urged that the principle recognised by the Universities being represented in Parliament should be extended to other Learned Societies. In any redistribution of the Elective Franchise an addition to the number of members representing Education might beneficially supply the vacancies occasioned by the disfranchisement of towns declining in influence and population. Lord Brougham, in his

Increase of the educational element.

The element of education should be more largely represented.

* A Letter to R. Freedom, Esq. on the Redistribution, Extension, and Purification of the Elective Franchise. Ridgway, 1853.
Second Letter to Ditto. Longman & Co., 1858.

1848.

speech on Parliamentary Reform, forcibly pointed out the evils which would inevitably ensue from the adoption of the proposition of Mr. Locke King, to establish a uniform £10 franchise in counties and boroughs. Such a plan would give to population a vast preponderance of influence over property, as the votes possessed by the unrepresented towns would swamp the county constituencies. A simpler and far preferable plan, and one which would admit the hard working mechanic and labourer to the exercise of the right of voting, would be to establish universally a Household Suffrage, without reference to value, but with the requisition of a residence for two years in the same house, and payment of rates and taxes. By this mode property would still retain its legitimate influence, while the element of numbers would receive a most comprehensive addition. The objection that a numerous class of persons who occupy lodgings or apartments would not, under this scheme, be admitted to the franchise, might be met by allowing these to vote, wherever they should be found to contribute a certain amount of taxes towards the national expenditure. In almost all cases the occupiers of apartments will be found to escape the tax gatherer, and in conformity with the Constitutional principles of Representation, can have no claim to have a voice in framing Laws for the government of the State.

Mr. Locke King's 10*l.* county franchise.

Household suffrage preferable.

Lodgers.

We now return to Lord Brougham's speech on Law Reform, delivered in 1848. Passing from the subject of the Elector to that of the Elected, he adverts, in indignant language, to the privileges enjoyed by members of Parliament, if insolvent, in setting

1848.

That members of Parliament should be out of the law's reach he declares to be a disgrace to the electoral system.

their creditors at defiance and finding a refuge within the doors of that highest of all Tribunals, when driven with disgrace from every Court of Law and Equity. "How much longer," he exclaims, "is it to be endured that men shall be suffered to act the part of Lawgivers, who themselves evade the Laws: that men shall represent the property of the Country, who have squandered away their own—that Insolvents, unless they be traders, in other words, Insolvents without any excuse for their Insolvency, shall beard their creditors, the honest tradesmen, whom they have ruined, and insult the community by taking a forward part in making the Laws which are to bind it, while they set themselves openly and audaciously in defiance of the very Laws they are making?" We have already alluded to the Bill introduced by Lord Brougham to remedy this abuse, and can only lament that Parliament shrinks, as in this, so in the case of Mr. Craufurd's Bill, from its own purification. The same reluctance is visible in the matter of Bribery and Corruption, next in order discussed by Lord Brougham. However stringent the Laws against the acceptor of bribes; however searching may be the inquiry into corruption instituted by the Bribery Commissioners; however earnest and zealous may be the investigation of the Committee, corruption will continue to flourish, till it is stigmatized as a dishonourable action and unbecoming a gentleman, by the sentence of the Legislature passed upon itself. The simple Declaration of each member upon his honour that he has neither directly nor indirectly been a party to or cognizant of any bribe, would do more to abolish corruption than

Laws respecting Bribery and Corruption.

Declaration to be made by each member elected.

any threat of Disfranchisement or penal proceedings.* It was to the honour of Mr. Walpole that such a declaration formed part of his Bill in 1853, but not equally honourable to Parliament that it met with little support. 1848.

The House of Commons hitherto adverse to such a declaration.

"A stringent declaration of each member with a promise not to pay any expences unlawfully incurred, and subject to the pains of perjury for a breach of truth, is the remedy to which I look as most efficacious and most suited to the nature of the mischief. I am happy to find that elsewhere this subject has been lately taken up with adequate zeal; and I believe wholesome inquiries are now being instituted there for the purpose of detecting and punishing offenders. But I greatly doubt if an error has not been committed in some instances from the desire to visit such practices on the sitting members. It should rather seem as if committees, led away by the natural indignation which the description of general corruption excites, have resolved upon convicting whoever was accused, without any regard to the material point of Agency, thus punishing one man for another's offence."

The Act of Parliament carried by Sir Fitz Roy Kelly in the session of 1853 for the appointment of an Election Auditor, before whom all election expences are to be proved (17 & 18 Vict. c. 102), would, if it had not been mutilated in its passage through Parliament, have been the most efficacious measure hitherto introduced, short of the declaration thus urged by Lord Brougham, for the repression of bribery at elections. Proceeding with the speech, we find some very valuable observations on the constitution

* The writer advocated this simple and obvious mode of preventing Bribery, together with others, in a Letter addressed to Lord John Russell, and published by Ridgway, in 1853, in the form of a Pamphlet, entitled "Is Bribery without a Remedy?"

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of those tribunals which try the returns of Members, and the needful improvement of which, his Lordship remarks, would, while generally amending the course of such important procedure, tend more to repress bribery by an equal administration of justice than any efforts of a well meant but irregularly directed indignation at the offence. The Commons had parted with their exclusive jurisdiction over the trial of Elections as far back as 1770, when the celebrated Grenville Act was passed (10 Geo. 3, c. 16), one of the inestimable benefits, he observes, conferred upon their country by that illustrious family. But experience had shewn, that although many material improvements had since been made in the constitution of the Committees, especially by the statutes diminishing the numbers of their members, and doing away with the anomalous character supported by the nominees, yet another step remained to be taken in order to render the trial of petitions in any way worthy of the name of a judicial proceeding.

Anomalous character of the tribunal in election petitions.

"It must," he continues, and public opinion endorses the assertion, "be transferred to a judicial body unconnected with the House of Commons, inaccessible to party claims, uninfluenced by personal feelings; a body not chosen accidentally for particular occasions, and composed of men without experience or learning, and acting without any responsibility,—a body, in a word, which will act as judges act, regarding only the merits of each case, and pronouncing decisions on legal points, with a careful regard to consistency and uniformity; not, as now, holding one day one opinion, another day the opposite, on the same point, simply because different men sit on several days, and diverse interests or feelings sway them. Some such amendment of the Election Laws as this must needs sooner or later be undertaken, for in no other way can the opprobrium be

Election petitions should be tried by a distinct and independent tribunal.

removed which now rests upon the conduct of Committees and the character of the House of Commons."—*Speech on Law Reform*, pp. 7, 8, 9. Ridgway, 1848. 1848.

From the makers of the Laws the transition is direct and appropriate to the composition and framing of those laws themselves, and here Lord Brougham observes that a scene is open to our view at once strange and painful to contemplate.

How our statutes are framed.

"No system whatever, nothing approaching to systematic is to be seen; all is random, all haphazard, all blind chance, all acting in the dark, without rule or guide, or compass or concert. The Bills propounded have a twofold origin; they come from boards or departments of the State, or they come from private individuals, whom, without any disrespect I may term amateurs in Legislation. But the Boards, independent and separate, act without any concert, any communication whatever, one entirely ignorant what the other is doing; each proceeding upon principles of its own, if principles any of them ever think of; each taking its own views of the same subject-matter on which the other is composing law: each employing a phraseology of its own; all generally in collision and often in conflict." "The result of this habitual carelessness and want of system in the preparation of our Laws might easily be foreseen. A mass has been engendered in which the obscurity of darkness alternates with the glare of cross light, meagre explanation with inexcusable prolixity, repetition with omission, repugnancy with truism, a mass which, if it be not termed nonsense and contradiction, only escapes those epithets from the respect due to the venerable name of a Statutory Record."—(Pp. 9, 11.)

He proceeds to shew that this mischievous confusion results from a neglect of those obvious principles which should guide the lawgiver in his labours, and the violation of certain rules or Canons which are so self-evident as to require no demonstration. Three of the most simple of these Canons he goes on to enumerate, and then illustrates their violation by examples.

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Rules or Canons for law making.

"1. A Statute should never be made without a careful regard to former Statutes *in pari materiâ*. 2. One part of a Statute should ever have regard to all its other parts. 3. Alterations made in passing a Bill should carefully be made having regard to the parts that are left unchanged." —(Page 16.)

Having given a notorious instance of the neglect to observe the third Canon, by an alteration during its passage through Parliament of his own statute for allowing copies of documents to be given in evidence (8 & 9 Vict. c. 113), some words being added, apparently for greater caution, which made nonsense of the whole measure, Lord Brougham reflects thus severely upon the authors of the professed amendment.

Severe comments on the makers of laws.

"Here the Legislature bears the aspect not of a doting person who forgets in old age recent events, not recollecting for one day or one hour what he had said the day or hour before, but of one who, being in the very last stage of mental imbecility, forgets at the close of his sentence what he had said at its commencement."—(Page 16.)

Language of statutes.

From the rules to be observed in framing the Statutes he proceeds to the topic of the diction or language in which they should be conveyed, the cardinal rules here being as simple as those already stated respecting the subject-matter of the Statutes, and flowing from the same principle of keeping in mind those to whom all laws are addressed, not only the lawyers and the Courts of law, but the whole community.

Certain legislative axioms.

"1. Always use the least equivocal and the plainest terms.
2. Never use a word which has two senses without defining in which it is used.
3. Never use the same word in two senses.
4. Never use different words in the same sense.
5. Never assume as known what has not been expounded.

6. Never, if possible, enact by reference to another Statute. 1848.

7. If to avoid greater prolixity, you must import another Statute, regard carefully the text of the Act referred to." —(Page 15.)

The violation of these Canons is in their turn illustrated by numerous examples within Lord Brougham's own knowledge. Then leaving the manufactory of Public Acts, where industry without method prevails, and the most discordant elements are in vain sought to be brought into harmonious action, he enters the great Department of Private Bill Legislation where the same mischief and the same confusion are more flagrantly conspicuous. The extent of the produce of this Department is, he observes, enormous. In the year 1836, 191 Private Acts passed the Legislature, comprising about 9000 folios, yet their provisions are even more important than their bulk or number.

Department of private bill legislation.

Its extreme importance.

"They deal with private vested interests and unquestionable legal rights in every one instance and every one provision. The reason and the only reason for passing each of them is, that the Law of the land has protected some party whom it is desired to strip of his rights. This branch of Law is truly transcendental: it is wholly occupied with transferring to one man the property of another—compelling persons to part with estates for the benefit of others; breaking contracts already made; annulling settlements of estates; setting aside the wills of persons deceased; dissolving the tie of marriage by law indissoluble; abrogating laws made for the whole community in favour of some individuals and against others. Such a branch of Legislation requires, of all others, peculiar care and close and scrupulous attention to avert error and prevent abuses; yet error flourishes and abuse triumphs here far more than in the construction of Public Acts. First there is no responsibility at all, not even that shadow of responsibility which the Departments of Governments offer for Public

The manufactory, a mass of blunders and imperfections.

1848.

statutes; secondly, the whole process is conducted in the dark as a hidden manufactory; the public attention which, through the Press and by the Debates of both Houses, prevents many faults in Public Acts, has here no part, the whole being carried on in secret; thirdly, worse than neglect, fraud and jobbing of every kind prevail. Once a clause was fraudulently introduced into a Public or Revenue Bill to benefit a private party: it was instantly discovered and the attempt frustrated. In Private Acts this is of daily occurrence, and with far less chance of detection. All is here done by compromise among a few parties, and the Public is always disregarded; the weaker individuals and their rights and interests are always set at nought."—(Page 25.)

The manufactory a mass of blunders and imperfections.

He proceeds to illustrate his argument.

He demonstrates the truth of his censures by the Act of the Great Western Railway Company, in which a clause is actually to be found enabling the Company to give a copy of its Books in evidence, without any proof of the copy being accurate, and another establishing the proof of the Company having paid Parish Rates by entry of payment in their own books. Such provisions, being in defiance of all legal principles, completely justify terms of condemnation which might otherwise be considered harsh and unreasonable. "What is worst of all," continues Lord Brougham, "the "errors and the frauds are never discovered until reme- "diless mischief has occurred, and the Courts are called "upon to construe unconstruable clauses and reconcile "self-repugnant provisions, and the parties to suffer the "hardships of oppression, delay and expense." The whole of this very important question respecting the present system of law-making was ably handled, in a Pamphlet published a few years ago by the late Mr. Graham Willmore, and entitled "Confusion worse Confounded." The arguments in favour of Reform in

Pamphlet by the late Mr. Graham Willmore.

this direction were here very logically and persuasively set forth. Lord Brougham, having indicated the defects and absurdities of the system, proceeds to point out in what manner they may be rectified and avoided in future. The first remedy he suggests, and that by no means for the first time, is the establishment of a permanent Board to assist the Government in the composition of Acts of Parliament. 1848.

Permanent Board ought to be established.

"I have often urged," he says, "the necessity of a Board being formed of skilful professional men, not to supersede but to aid both Houses of Parliament in the preparation of public Bills. It is a task which no man, how gifted soever, can hope satisfactorily to execute, because several men are required of different habits of thinking, of various turns of mind to sift the questions successively dealt with in our numerous subjects. At the head of this Board should be the Minister of Justice or his deputy. The necessity of this office I have repeatedly urged, and I may, before I sit down, once more recur to the subject."—(Page 28.)

With a Minister of Justice at its head.

Lord Brougham accordingly adverted again to the institution of a Board of Justice in a subsequent part of his speech, where he urged the necessity of separating the Judicial from the Executive and Legislative Powers. It will be seen that he himself introduced a Bill, having for its object the appointment of a Chief Judge in Chancery, divested of any political office.

Chief Judge in Chancery.

"The judicial powers of the Chancellor must no longer be held in the hands of a Judge holding his office during pleasure, and the first member of a political party as well as of a Ministerial body. There remain abundant duties for that high officer after this anomaly in our system is removed. He should be the Minister of Justice—a functionary much wanted in this country, the want of whom indeed meets us at every step, whether we regard the Amendment of the Law or its due Administration; and I rejoice to find that

Opinion of the late Lord Langdale.

1848. on this important question we have now the sanction of my noble friend the Master of the Rolls (Lord Langdale's) high authority."—(Page 63.)

The proposition for a department of justice carried unanimously in the House of Commons.

We congratulated the country four years ago that a Department of Justice had at length been ceded to the frequent solicitations of Lord Brougham and the persevering exertions of Mr. Napier, seconded by the efforts of the Law Amendment Society; but the Department has never made its appearance. It is to be hoped that whenever the constitution of this most important branch of the Administration has been decided upon and made known to the public, not the least of its functions will be found to consist in the preparation and correction of Statutes intended to be presented to Parliament by the different members of the Administration. The remedy propounded by Lord Brougham to obviate the frequently crude and hasty Legislation in the passing of Private Bills is to be found in a plan already submitted by him, along with two others, to the consideration of a Committee of the Lords in 1837, appointed to inquire into this important subject. While he expresses his satisfaction that one of those plans, namely, that enforcing Standing Orders to be conformed to by individuals or Public bodies applying for Private Acts, had received the sanction of their Lordships' House, and after some delay had been adopted by the House of Commons, he complains that what he then and still regarded as his best plan did not meet with the approval of the Committee.

Lord Brougham's proposal for a

Let us hear his Lordship's explanation of his scheme in his own words:

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tribunal to try election petitions.

"The plan, by far the most effectual and the best calculated to prevent error and injustice and to save delay and expence to parties, was grounded on the valuable suggestions of my noble and gallant friend (the Duke of Wellington), made in 1834, and at that time worked out by me in conjunction with him. I am convinced that it afforded by far the best remedy: it is to have a jury *de medietate*, as it were, formed in each case, a joint Committee of twelve, seven Commoners and five Lords, to examine the whole of the Bill, to hear counsel and take evidence under the presidency of a Judge, a professional man, unconnected with Parliament altogether, the joint Committee to find a special verdict, setting forth the whole facts of the case, such verdict to be conclusive on both Houses, and to form the groundwork in point of fact of all their Legislation in the matter of the Bill. I laid before the House, both in the last and in a former Session, a series of resolutions for working out this principle and applying it to all Private Bills, and as I am clear it is the only effectual remedy, so I have sanguine expectations of its being one day adopted."—(Page 29.)

All Bills of a private character should be removed from Parliament.

Another remedy proposed by him to get rid of the anomalous character of legislation as regards Private Bills, is that all subjects rather judicial than legislative, should at once be abandoned by Parliament, and handed over to the established Tribunals of the country. Of this description are Estate Bills, which are entirely of a Judicial character, and Divorce Bills still more so. The latter, except in the case of ultimate Appeal to Parliament as the Supreme Tribunal, are, by the last act of Legislation emanating from the Parliament of 1858 (20 & 21 Vict. c. 85), consigned to the quarter indicated by Lord Brougham. The transfer of Estate Bills to the ordinary Courts of Law would not, as his Lordship points out, be without a precedent, for the extension of patents was by his own Act of 1835 vested in the Judicial Committee of the

1848. Privy Council, Parliament having a concurrent jurisdiction. This change of the Law had proved so satisfactory that since the doors of the Privy Council had been thrown open, not a single instance had occurred of the patentee applying to Parliament for an Act.

Judicial Committee of the privy council.

CHAPTER VI.

Continuation of Lord Brougham's Speech on Law Reform in 1848—He takes a survey of the existing field of Jurisprudence—Its altered state since the days of Bentham and Romilly—Mitigation of the Criminal Code—Retention of Capital Punishment necessary in extreme cases—Danger of erroneous convictions to be avoided by a Supreme Court of Appeal—Law of Libel—Of Real Property—He recommends a general Registry of Title—Insurance of Title first proposed by Lord Brougham—Digest of the Criminal Law—Necessity of a public prosecutor—Observations on the glorious victories of Peace.

1848.

He passes on to the administration and execution of the laws.

HAVING thus disposed of that part of his subject which related to the making of Laws, Lord Brougham enters upon the far wider field of existing Jurisprudence—Law as it is to be administered and claims the subject's obedience. Casting his eye over the improvement and gradual progress towards as much of perfection as human wisdom is able to compass, which had attended the efforts of the Law Reformers during the preceding twenty years, he derives encouragement from success to persevere in that useful but toilsome and uninviting path. He may be excused for referring with pride and gratification to the share he had had in introducing and in carrying out many of those Amendments of the Law which Romilly had left unaccomplished.

Takes a retrospect of what has been done in the last sixty years.

1848.

"Between 1785 and 1790 Sir Samuel Romilly, as appears by his papers, proposed many Legislative Reforms, few of which he himself brought forward. Of these one-half had been adopted twenty years ago, when I brought forward this subject in the other House, and now almost all of them are introduced into our Jurisprudence. Of above seventy defects whereof I complained on that occasion, about sixty have since been removed, nor were those slight defects or those changes small innovations. I complained that party prevailed over the selection of Judges; and of late years, both while I held the Great Seal, and in the time of my noble and learned friend (Lord Lyndhurst) who succeeded me, as well as while my noble friend on the woolsack (Lord Cottenham) has held office, no party considerations have been allowed to influence the selection of those high functionaries, any more than Sir Robert Peel had, previously to 1828, been swayed by party consideration in naming the Judges of Scotland. I complained of the Welsh Judicature; this has since been abolished, and the Principality subjected, as I recommended, to the same tribunals with the rest of the realm. I complained of the Court of Delegates; it was abolished by my Act of 1833: of the Judicial system prevailing in the Privy Council; it was reformed by the same Statute, and the Judicial Committee substituted for the trial of all appeals, both from the Consistorial Courts, the Court of Admiralty, and all our various and extensive foreign possessions. I complained of real actions, including fines and recoveries. Real actions, with the single exception of *Quare Impedit*, are swept away, and fines and recoveries altogether. I complained of many defects and anomalies in the Law of Evidence; these defects have been almost entirely removed by the admirable Act of Lord Denman (6 & 7 Vict. c. 85), though one important step in the same direction yet remains to be taken" (taken in 1851, by the 14 & 15 Vict. c. 99,) "by examining parties themselves. I complained of the period of Limitation, especially of the suffering it to be interrupted by the duration of estates tail, and of the immunity from all limitation enjoyed by Church rights. The Acts of Lord Tenterden in 1829 and 1832 (2 & 3 Wm. 4, c. 71, and 2 & 3 Wm. 4, c. 100), and those to which my noble friend (Lord Lyndhurst) and I obtained the

He enumerates many legal reforms which he has assisted in bringing about.

Civil Courts.

Fines and recoveries.

Evidence Act.

Limitation statutes.

concurrence of Parliament in 1833 have removed these defects, so that now the opprobium of the Law exists no longer, by which rights might formerly have been enjoyed, as against the Church, for centuries, without the least security to the possessor, and by which in one case a large estate in the North, after being possessed for above a century and a half, and being made the subject of settlement and sale and mortgage over and over again, was found to be the property of a mere stranger, in consequence of estates tail not having been determined, and no adverse possession having been had as against the reversioner. I complained that the Statute of Frauds had not been united with that of Limitations, and now writing is requisite to prevent the time from running. I had complained loudly of the impediments to settlement by Arbitration; this defect has been removed by the Act of 1833, as well as many other anomalies in our system of Pleading, on which I had dwelt particularly in 1828. The cruel and unjust as well as impolitic Law of Arrest for Debt of which I had also complained, has been entirely changed. Arrest on mesne process was abolished by my noble friend on the woolsack (Lord Cottenham) in 1837, and my Acts of 1844, 1845, have abolished arrest altogether—Acts framed upon the principle which I propounded in 1828, that debtors should only be imprisoned for the crime of fraud, or gross extravagance, or for refusing to give up their property to their creditors."—(Pp. 32, 33.)

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Arbitration.

Pleading.

Law of Arrest.

Having thus glanced at the many improvements to which he has rendered powerful assistance, and having adverted to the more rapid speed at which Law Amendment is progressing at the period when he speaks, he avows his sanguine and confident expectation that the defects and imperfections still permitted to inhere in the system will soon be eradicated and expelled. Nevertheless, he cannot side with those who, desirous of reforming the Criminal Law, are in favour of the total abolition of the Punishment of Death. The Committee on Transportation, whose

Sanguine hopes for the future.

1848. Report had been published in the preceding year, had expressed themselves strongly for its retention in our Criminal Code, and the sentiments of their Chairman had in nowise changed.

His reasons for retaining the punishment of death in certain cases.

"The Criminal Law has been made as mild, generally speaking, as can be desired. The restriction of Capital Punishment to treason, murder, and one or two other very grave offences, gives all the mitigation that is desirable to our penal Jurisprudence. I am very clearly of opinion that we may here pause. I think, and I decidedly and on much reflection think, that there is no good reason for dispensing altogether with the punishment of death. I hold the doctrine, without any hesitation, that we have a right to inflict that highest of all penalties on malefactors with a view of preventing a repetition of those crimes by others, stamping as it were with a peculiar awe those graver offences; and I hold that we have no other or better right to inflict punishment of an inferior kind than the right we derive from its high expediency, the same being the ground of our right to punish capitally. These opinions, I am aware, are not popular. I know that out of doors they will give rise to dissatisfaction, and it is therefore for the sake of truth that I think myself bound to give them utterance in this place and upon this occasion."—(Page 35.)

No other punishment so effectual as a deterrent.

The atrocity attending several late instances of murder, particularly by poisoning, of all crimes the easiest to perpetrate and the most difficult of detection, has reconciled the public mind to the retention of capital punishment, in extreme cases, as a necessary safeguard of human life: it still, however, has many zealous and enlightened opponents. Whenever a punishment shall be discovered, short of death, which will act with the same force as death itself, to deter men from the most heinous crimes, we may safely erase from our statute book this terrible retribution; but if, as we feel convinced, the ebullition of the worst

passions of our nature can only be held in check by the feeling of certainty that life will pay the penalty of life, we must continue firm against the sophistries and appeals of a spurious humanity, which entertains more pity for the murderer than for his victim. It is unquestionable but that popular feeling is sometimes agitated either by doubts as to the justice of a conviction or strongly sympathizes with any circumstances of provocation which may morally appear to mitigate and extenuate a capital crime, although legally they are no excuse for it. The remedy to be applied to this state of things is, we submit, not the total abolition of capital punishment, but the institution of a competent Tribunal, up to this period unknown to us, in which evidence, coming to light after trial and judgment may be elicited, doubts may be cleared up or made certainties, guilt confirmed, and innocence, even at the eleventh hour, have the best chances of being established. Lord Brougham's observations on the necessity of an Amendment of the Law, by an alteration of that branch of it which relates to Evidence, need find here no place. At the period when he spoke, Lord Denman's Act had lately rendered a witness no longer incompetent through interest in the suit. Brougham again urged, as he had done before, that the parties to a suit should be admissible as witnesses. This important change was effected in 1851 by his own Act, 14 & 15 Vict. c. 99.* The same thing, however, cannot be said of the Law of Libel, although he had repeatedly advised a change

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Necessity of a Supreme Court of Criminal Appeal.

* Act to amend the Law of Evidence. 1851.

1848. in its provisions as essential to the security of the subject against prosecutions instituted by the Government.

Improvements in the law of Libel.

"The late improvement of the Law of Libel by the Act of my noble and learned friend opposite (Lord Campbell), removes one of the complaints made by me in 1828, and carries into effect the object of a Bill which I twice brought into the other House, having had the invaluable assistance of the late Lord Chief Justice of the Common Pleas (Sir N. Tindal) in preparing its provisions, both in 1816 and 1830. I have to lament that the late Act leaves out the most important, and, I think, most wanted part of the Amendment which my Bill proposed; for it is confined to cases of private slander, whereas the political offence far more deserves mercy and protection. The truth cannot yet be given in evidence in any prosecution for Libel upon the Government or its officers in their public capacity, and this I conceive to be a great defect existing in our Law."—(Pp. 37, 38.)

Real Property.

Passing on to the subject of Real Property, Lord Brougham points out that the great end of the law-giver, in all his plans for amending this great branch of our jurisprudence, must be to secure the security of its possessors and to increase the facility of its transfer. Many alterations, he remarks, are necessary to place Real Property upon a sound and reasonable footing, and to give both owners and purchasers their due protection. Among the measures which he contemplates as calculated to secure these important ends, he mentions first the Declaratory Action, upon which subject he introduced measures, first in 1843, afterwards in 1845, and ultimately in the year 1848.

Declaratory action again recommended.

"Grievous is the condition of parties in possession or parties intending to purchase from doubts how their titles may fare when brought into Courts of law or equity. A

1848.

suit must actually exist before they can have the possibility of being quiet and secure. Now there is an easy remedy for this serious evil by introducing, as I proposed to do by my Bill, presented three years ago (1845), the Declaratory Action from the Scottish Law. Succeeding Chancellors, myself included, have often lamented the want of this most useful provision in our system. A possessor of real estate thereby raises an action of declaration, as it is termed, making parties all persons who may have any interest vested or contingent in disputing his title, and after full discussion of the case he obtains a judgment, which binds all these parties and their heirs for ever; he thus possesses his estate from thenceforth as securely, and deals with it, if he is unfettered by any entail, as beneficially in selling, exchanging, and mortgaging, as if he had the title of an Act of Parliament. In England he must wait until some one chooses to dispute his title, which perhaps no one may do until there be some defect of evidence, or some new decisions of the Courts pronounced, or some new doctrines ventilated among lawyers; for these have their varying modes and fashions like other men. It is not till then that any man in this country can call himself sure, because till then the Court has not given any judgment; but the Scotch proceeding enables him to anticipate future events, and to enjoy and use his estate exactly now as if he had survived his own day and lived in a future period of time. I shall deeply lament if this improvement be not soon made in our law. The objection that we may thus bind persons not yet in existence is really futile. We do so every day, not merely in Acts of Parliament but in proceedings at Law, and still more in Equity, and the protection thrown round all possible interests by the Declaratory Process makes it really no more hazardous to unborn parties than any suit which he brings or defends, with all the admissions he makes in the cause of it, is to a man's successors."—(Pp. 46, 47.)

Superiority of the Scotch system as regards title.

He proceeds to enumerate other safeguards to title which might be introduced, especially the still further shortening the period of limitation within which the possessor of real property may be disturbed by hostile claims; the curtailing of conveyances of excessive

Additional safeguards of title proposed.

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General registry of title.

length, and the immense expence attending their preparation, on which subject he had introduced a measure into Parliament in 1846, and lastly, the Establishment of a General Registry of Title. The expences of conveyancing, he remarks, might be diminished by the practitioners being remunerated, as is the established practice in Scotland and in Australia, according to the value of the property dealt with and the labour of drawing the conveyance, and not according to the length of the draft and the number of the folios. With regard to a Registry of Title, all attempts to establish this much required improvement have been hitherto unavailing. Although the remark of Blackstone, "that property best answers the purposes of civil life, when its Transfer and Circulation are free and unencumbered" (2 *Comm.* 288), is universally concurred in, yet, when an endeavour is made to reduce this principle into practice and to adopt measures for simplifying the Transfer, innumerable objections and uncompromising opposition immediately start up. Of these measures Lord Brougham classes the Registry of Title as among the most important.

"I need hardly dwell," he says, "on the benefits of a Registry for securing titles and facilitating transfers of property. England is nearly the only country which is still without this advantage. When in office I caused a measure of this nature to be prepared and introduced into the other House by an honourable and learned relative, then member for the Borough as well as a Master in Chancery (Mr. W. Brougham). The clamour of country practitioners raised against it had the effect of misleading the country gentlemen, who were made to believe that their titles would thus become published, whereas the most stringent regulations were made in the Bill to prevent the pos-

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sibility of anyone seeing a single line of any title without express permission given by the owner in writing under his hand. Of course when a sale or exchange, or mortgage was in negociation, the lender or purchaser must have access to the deeds; but so he would whether they were put upon the register or not. Connected with the registry should be an authentic and detailed map, the result of a survey of each county or smaller district, what the French call a *Cadastre*, to which on each sale, mortgage, or other conveyance, reference should be made, each change of possession being entered upon the face of the plan. Nothing can better tend to both conciseness of conveyancing and security of title than this scheme, and the experience of Belgium and some other parts of the Continent pronounces amply in its favour."—(Pp. 52, 53.)

Map of landed estates.

The suggestions made by Lord Brougham, respecting Depositories for Wills, immediately following the above observations respecting Registry of Title, have been, as we have already observed, carried out in the Probate Bill, which has lately become law (20 & 21 Vict. c. 77). The Act will be found to contain no more useful provision than that which establishes places of safe custody, where persons during their lifetime may deposit their wills, and to which at their decease their relatives or executors may have certain and speedy access. The valuable remarks made by Lord Brougham upon this subject are of interest, even although legislation is no longer a requirement, inasmuch as they shew how sensibly he deals with the ordinary questions of life, and are the best refutation of those opponents who cavil at the improvements he proposes as chimerical and unsuited to every day practice.

Depositories of wills.

"One kind of register I must advert to, because to that none of the objections can by possibility apply which are made to a General Registry; I mean a public office in

1848.

which any person may deposit his will for safe custody and under his own seal, so as to be accessible only to his representative, but also on his decease to be examined by all devisees and legatees. At present no one can tell how he is to secure his will from loss by accident, or indeed from destruction by interested parties. The heir disinherited, or the next of kin wholly or in part passed over, are generally the persons who have access to a man's repositories on his decease, and by them spoliation may easily be committed, if it be their interest to cause an intestacy. I have often been asked how a person should secure his will. Bankers may break, solicitors may die, and, no one succeeding to their business, documents in their keeping may, as has once and again happened, been cut up into tailors' measures. Even making duplicates, previous to the late Wills Act, was attended with risk under the nicety of the law, which made the destruction of one copy a revocation, unless it could be satisfactorily shewn to have been done without the intention of revoking. A greater relief to testators, I am certain, could not be given than such a Register Office, and the expences of maintaining it would, I am sure, be willingly reimbursed by payment of the fees.—(Pp. 53, 54.)

Insurance of title by means of a government office.

The important question of Insurance of Title* is next dealt with, his object being, by the establishment of a Government Office for this purpose, to avoid the expence and delay so constantly incurred when money is sought to be raised upon landed estates, or a sale to be effected of all or any portion of them. At the present time a long and costly investigation is equally unavoidable in the smallest mortgage or sale, as in those of the greatest magnitude. The plan proposed by Lord Brougham is well worthy of attention. Its simplicity is one of its best recommendations.

"I cannot," he says, "leave this branch of the subject"

* Chandos Wren Hoskyns, Esq., of Wraxhall Abbey, Warwickshire, has in the present year (1860) proposed Insurance of Title by means of Private Companies.

(viz. title) "without impressing on your Lordships the expediency of another scheme, sanctioned by all the consideration which eminent men have given to the subject. I mean the introduction of Insurance into dealing with Real Estate; in a word, the Insurance of Title. When once any title is examined, as by offices lending money upon it, why should not this investigation suffice as often as any other transaction takes place respecting the same title? Yet if money is to be raised ten times on lands all held in the same right, ten times are all the expence and delay to be incurred, when once ought to have sufficed. A Government Office established to give all owners security would be a blessing to all the proprietary portion of the community. The terms of insurance must needs be moderate: for all are agreed that the vast majority of titles are really good and such as give small chance of eviction, and the profits of the depositors would be in proportion to this preponderance of safe titles, and the rare occurrence of an owner being evicted. These profits would suffice to pay the party whom the law should deprive of his possessions, and to leave a considerable surplus for the expences of the office. When we consider the proceedings of Insurance Offices, and other bodies lending money on real security, we shall perceive that they really act upon the very principle which I am recommending for adoption." —(Pp. 54, 55.) 1848.

Criminal Code.

Passing on to the topic of a Digest of the Criminal Law, and observing that he only waited for the final Report of the Criminal Law Commissioners before he should introduce a Bill into the House of Lords enacting a Criminal Code*—a code defining all crimes and their punishments, to be followed by a second, enacting a Code of Criminal Procedure, he adverted to one very striking advantage which would necessarily result from such a digest, viz. that whenever any branch of the laws had been thus arranged, any inconsistencies

* Several Bills having for their object the consolidation of the Criminal Law, have been brought into the House of Lords by the Lord Chancellor during the present session (1860).

1848. in their provisions had been detected by juxta position, and thus the discovery of defects had led in almost all cases to salutary amendments. We abstain from commenting upon the censures made by Lord Brougham upon Chancery proceedings. Although many reforms and improvements have been effected in equity, those Courts still retain their iron hold of much business which might much more cheaply and expeditiously, and not less efficiently, be transacted in the common law tribunals.* He laments the omission from the County Courts Act of his clauses committing to those Courts the administration of small legacies. The difficulty of obtaining a decree without considerable expence in cases where a small amount is in issue, entirely closes the doors of the Court of Chancery against suitors of the poorer classes.

Want of a Public Prosecutor.

If the want of a Public Prosecutor was still a grievance complained of by Lord Brougham in 1848, it is still in 1860 among the questions constantly mooted in Parliament, but still appearing as far off as ever from being settled. Now that three great questions, viz. those of Breaches of Trust, Divorces, and Testamentary Jurisdictions have succumbed† to the indomitable energy and perseverance of Sir Richard Bethell, the path is laid open for less complicated measures of Law Reform, and it is to be hoped that the Attorney-General will lay his hand among the first

* Bills having for their object the fusion of Law and Equity, have been introduced by the Lord Chancellor (Campbell) during the present session (1860).

† By the stat. 18 & 19 Vict. c. 67; stat. 20 & 21 Vict. c. 85; and stat. 20 & 21 Vict. c. 77.

upon that for the appointment of a Public Prosecutor, which is more than ever necessary, in consequence of the apparent reluctance to prosecute the common law offence of bribery and corruption. 1848.

"We still," observes Lord Brougham, "we alone of all civilized nations; we, contrary to all principle and in spite of all experience, still persist in leaving the Criminal Law to execute itself. No provision whatever is made in our system for any one criminal being brought to trial, any one offence prosecuted; no provision, at least that is of the least certainty, or that may not just as well prove nugatory as effectual. A man is robbed—he has the additional misfortune of being bound over to prosecute the robber; his life is attempted—he has the additional risk of losing the costs of the trial" (that is now remedied), "and the certainty of losing his time in urging it on. Public prosecutor we have none, all is left to hazard; the worst crimes may go unpunished, aye and the innocent parties may be involved in a prosecution."—(Page 73.)

The year 1848 an epoch in the history of Law Reform.

We have made copious extracts from this Speech of Lord Brougham delivered in 1848, because it constitutes another epoch in the history of Law Reform, as well as in his own legislative career. The twenty years which had passed away since he made his first memorable statement on this great subject in 1828, had witnessed the realization of many of his hopes, the partial acceptance of some of his proposals, the total rejection of others. Firm of purpose, and unshaken by failure, that alembic testing the true qualities and character of the statesman, he once more in riper age and with maturer judgment girded himself to the task of pointing out what still remained to be accomplished. Contrasting the peaceful calm which pervaded our country and its institutions at the moment when neigh-

1848. bouring shores were rent asunder with the tempest of civil war, and the air was resounding with the crash of fallen thrones, he urged the Legislature to perpetuate that safety which England providentially enjoyed, by the removal of every flaw still existing in our system.

Attachment of the English people to their national constitution.

"It is," he exclaimed, "because all other states are shaken and ours alone is secure, that I would have you make those institutions perfectly to be loved, which you bid the people press home to their bosoms. I have the most entire and undoubting confidence in the powers of our constitution, and the loyalty, the virtue, and the courage of my fellow-subjects to sustain it. But the better the law is under which they live, the cheaper is its administration to them, the closer its remedies are brought to their own doors, the plainer it is written for them to read, and the simpler to comprehend as digested, the more secure property becomes in the enjoyment, the easier to exchange and transfer, making it, as Blackstone says, answer more perfectly the purposes of civil life; removing, as Locke hath it, the shoals and quicksands which beset the course of those who deal with it; the better will our system deserve the people's love, with the more fervent loyalty will it be by them upheld, the more firmly nerved in its defence will be their gallant arms, the more inaccessible their honest hearts to the acts of all its enemies."—(Pp. 77, 78.)

Advantages of perfecting the law.

These just sentiments, so eloquently expressed, will find an echo in the breast of every Englishman and lover of his country, whatever be his political creed, his rank or calling. We have thus analyzed at considerable length this important speech. It concluded with asking the House of Lords to read, for the first time, a Bill intituled An Act to Consolidate and Digest into one Statute all the Laws of England, as far as relates to indictable offences and the punishment thereof. That Bill was, however, presented to Par-

Bill for consolidation of the statutes.

liament by its noble and learned Author, not so much with expectation of its finding acceptance with its hearers as furnishing him with an opportunity to ascend an eminence from which he might survey the vast region of Jurisprudence, and see in what quarter the crop of Law Amendment had been gathered in, what fields were now ripe for the sickle of the husbandman, where dark shadows rested upon the mountain and the forest, and where the sterile soil still defied regeneration and culture. Much remains to be done, although twelve years have passed away since he took counsel with the public upon measures having no private or political interest to serve, but solely their own welfare. Nevertheless, the retrospect of the past, and the consideration of much that has been accomplished, bids us regard with cheerful confidence the gradual but steady movement of human progress, which, like the flowing tide of the ocean, may seem to recede awhile but is imperceptibly advancing. The success achieved by Lord Brougham will be a landmark to those who struggle for awhile in the tempest of prejudice and opposition, but ultimately gain the harbour.

1848.

CHAPTER VII.

Further progress of Lord Brougham's legislative career—In 1849 he carries the Bankruptcy Consolidation Act—Presides at a Meeting of the Law Amendment Society for the establishment of a Law School—More observations on the making of Laws—He brings in again his Criminal Law Consolidation Bill, 1850—County Courts Equitable Jurisdiction and Further Extension Bills, 1852—Sir H. Keating's Bill of Exchange Bill, 1855—Speech on Criminal Procedure—Act for Summary Trial of Offenders, 18 & 19 Vict. c. 126—Its advantages both to society and the prisoner himself—Judicial Statistics Bill—Great importance of these Statistics to the improvement and perfecting of our Jurisprudence—Lord Campbell's Act for enabling prisoners committed in the Provinces to be tried in the Central Criminal Court—This Act based on a Bill introduced in 1845 by Lord Brougham.

1849. LEAVING the above interesting record of an important period of his Lordship's life, we resume what may be termed the Annual Register of his Acts and Bills. In 1849 he endeavoured to induce the Legislature to amend and extend the provisions of the statute 8 & 9 Vict. c. 119,* which had been passed in 1845, its object being considerably to reduce the costs incurred in the preparation of conveyances, mortgages, wills, &c. We may recollect that he had, in his speech of 1848, dwelt upon the difficulties thrown in the way of transferring property by the heavy amount of law expences, and this Bill, so immediately following his observations, shewed him prepared to apply a practical remedy to the grievance. The Bill, however, was unsuccessful. On the 12th July, in the same year, he again presented the first of the Bills for the Consolidation of the Criminal Law, comprising the capacity or incapacity of

* Act to facilitate the Conveyance of Real Property. 1845.

1849.

persons to commit crimes. But the measure of Law Reform, attributable to Lord Brougham, which especially signalizes the year 1849, is his Bankruptcy Consolidation Act,* containing upwards of 270 sections and completely codifying this complicated branch of jurisprudence. By this statute, the offences which render a bankrupt amenable to penal law are clearly defined, and appropriate punishment is apportioned to each degree of misconduct; while those acts of a trader, which render him liable to be made a bankrupt, are set out with clearness and precision. In a great commercial country like our own, where the interests of the creditor must be protected without unduly cramping the enterprise and elasticity of trade, it is of the utmost moment that the Law of Bankruptcy should be simplified, as far as the subject, by its very nature so involved in perplexities, can admit of. Bankruptcy and disorder are almost synonymous terms; and yet a careful perusal of the 12 & 13 Vict. c. 106, will enable any tradesman of moderate capacity to comprehend fully the law which is to protect him, should he incur difficulties unforeseen and unmerited, and to chastise him if they are caused or aggravated by his own wilful misconduct. The fluctuations of business are however so frequent and so rapid that already in some of the District Courts of Bankruptcy, the

12 & 13 Vict. chap. 106.

Importance of effectual Bankruptcy Legislation in a great commercial country.

* Nevertheless, in consequence of some errors discovered to exist in this statute, Lord Brougham brought in a second Bankruptcy Consolidation Bill in the following year, 1850. Among these errors was the non-repeal of the Debtors and Creditors Arrangement Act (7 & 8 Vict. c. 70), which applies solely to non-traders.—Macrae's Insolvency, ed. 1852.

1849. judicial apparatus is far more cumbrous and expensive than is actually requisite, and probably no long period will elapse before those Local Courts,* which despatch the insolvency business throughout the country, will be called upon to consolidate both Bankruptcy and Insolvency enquiries into one department. As we advance towards the present time we find no relaxation

1850. in the untiring industry of Lord Brougham. In 1850 (July 3rd) we find him presiding at a meeting of the Law Amendment Society for the establishment of a law school, where, in the course of an inaugural address, he adverted to those anomalies in the making of laws upon which he had already commented in his speech on Law Reform in 1848.

Inaugural address at a meeting of the Law Amendment Society.

"Bad workmanship in law making," he says, "is not the only fruit of ignorance in the lawgiver. The progress of improvement in jurisprudence meets indeed with no more powerful, indeed fatal obstruction. This will appear manifest if we shortly survey the causes of those defects, both numerous and weighty, which prevail in every long established system of law, and the remedy for which is what we chiefly mean by Law Amendment. The large mass and the complexity of the system proceed from the same causes to which we may ascribe its many defects.

How laws may become defective, and inapplicable to existing phases of society.

(1). A law which was good when made, because fitting to the existing state of society, may become, by subsequent changes, inapplicable and positively hurtful.

(2). It may become both complex and prolix from the lawyer's desire to combine historical associations with the requirements of the present time, and his endeavour to make old law suit new circumstances.

(3). It may be ill devised from ignorance, and yet be the work of lawgivers sincerely desirous to attain excellence in their work.

* A Bill to amend the Bankruptcy and Insolvency Laws has been introduced by Sir R. Bethell (Attorney General) in the present session (1860).

(4). It may be made in the expectation of beneficial operation, and that expectation may be disappointed by experience of its effects. 1850.

(5). It may have been made with particular reference to certain cases and circumstances of a partial and temporary character (a large source of legislative error), and thus be found by experience to be generally inapplicable.

(6). It may be rendered bad from the necessity of yielding, however unwillingly, to public prejudice, or to falsely supposed but dearly cherished public interests.

(7). It may bear the plain marks of sinister motives in consulting sinister interests, and those not only of lawyers, called on this subject by Cromwell the sons of Zeruiah, but interests of other classes also.

(8). It may exist only in the decisions and dicta of judges, and so be scattered over many scores of volumes, as the Roman law before Justinian was said to be the load of many camels.

(9). It may betoken professional prejudices, the rather because those of lawyers most easily mix themselves with judge-made law."—*Law Review*, vol. 12, p. 236.

The institution of a School for Legal Education, where principles such as these expounded by Lord Brougham might form the basis of elucidation and elementary instruction, is a topic of extreme importance. It is clear that even with the improvements lately introduced, both as regards Examinations and Lectures, by Sir R. Bethell and other enlightened lawyers, the Inns of Court have long survived their original intention; and if a university strictly legal cannot be instituted, it is worthy of consideration whether a knowledge of the principles of jurisprudence should not much more extensively than it is at present be made a necessary part of academical education. There is no reason why the general complaint should continue to be made, that in all other branches of

Reconstruction of the Inns of Court necessary.

1850.

knowledge and science, except law, the foundation is laid in elementary instruction, whereas in jurisprudence we charge the memory of the law student with facts, but seldom exercise his understanding by calling upon him to prove their reasonableness by a deduction from first principles. Hence it is that the lawyer plunged into practice, and having his attention fully fixed upon the transactions of every day life, has seldom the leisure or the inclination, at a subsequent period of his career, to take a philosophic view of his profession, or to consider calmly those laws which he is daily required to expound. Hence, too, the difficulty he encounters should he attempt himself to become a law maker. Hence it rarely happens that our judges are favourable to amendments of the law, still more rarely are qualified to originate or superintend them. To this cause, lastly, may be in a great measure ascribed the errors committed in legislation pointed out by Lord Brougham; and as he admits, that it is the lawyers who must frame the laws, however the legislature may ultimately assent to them, perhaps no more simple or more efficient remedy can be devised, for the errors we are prone to fall into in their composition, than the advancement and extension of legal education.

Defects of the present system of legal education.

In 1850 (8th February) Lord Brougham again brought in his Criminal Law Consolidation Bill. The Criminal Law Digest prepared by the commissioners had been presented to the House of Lords in 1844, and had been referred to a select committee after having been read a second time. No progress was however made in the question. He was more suc-

Reintroduction of the Criminal Law Consolidation Bill.

1850.

cessful in carrying through the Legislature the stat. 13 & 14 Vict. c. 60* (commonly called the Trustee Act), by which the Court of Chancery is empowered to deal with the estates and stock of lunatic trustees and mortgagees, and also to make orders in various cases of trust estates. A Bill brought in by him in the course of this year for the purpose of separating the judicial and political functions of the Lord Chancellor, by the appointment of a Chief Judge in Chancery, and also a Bill enabling two Judges on circuit to hear and determine appeals from the County Courts (two most useful measures, and which are among the Law Reforms still remaining to be accomplished), were unattended with success. We must not omit, however, among the acts of 1850, to include the Acts of Parliament Abbreviation Act, 13 Vict. c. 21,† for which valuable measure the country is indebted to Lord Brougham.

Bill for separating the legislative and judicial functions of the Lord Chancellor.

1851.

Passing on to the year 1851, we find among the pages of the Statute Book three Acts belonging to him; two improving and extending the Patent Law, viz. the 14 & 15 Vict. c. 82,‡ and the 15 & 16 Vict. c. 83 (which however did not finally become Law until the following year)§ and the memorable Act making parties to suits admissible as witnesses, 14 & 15 Vict.

* Act to consolidate and amend the Laws relating to the Conveyance and Transfer of Real and Personal Property, vested in mortgagees and trustees. 1850.

† Act for shortening the Language used in Acts of Parliament. 1850.

‡ Act to simplify the Forms of Appointments to certain Offices, and the manner of passing grants under the Great Seal. 1851.

§ Act for amending the Law for granting Patents for Inventions. 1852.

1851. c. 99* (Aug. 7, 1851). Twice too, in the course of that year (10th April and August 5th), he presented Bills to improve and amplify the Procedure of County Courts; the former being the County Courts Equitable Jurisdiction Bill and the latter the County Courts further Extension Bill. Both these Bills failed at some stage of their progress through Parliament.

1852. Undiscouraged by defeat, in the following year (1852) he brought in another County Courts further Extension Bill, almost identical with the last, but containing the Amendments made in it by the Commons. A measure on the subject of the County Courts passed the Legislature in that Session, viz. the 15 & 16 Vict. c. 54, by which the Judges were precluded from practising at the Bar, which privilege they had enjoyed up to that period, and, as a compensation for this restriction, their salaries were fixed at a sum of £1200 per annum, to graduate up to £1500, in proportion to the increase of the business in their Courts. A retiring pension, in the event of their necessary retirement through illness incapacitating them from a proper discharge of their judicial functions, was also awarded to them by this statute, the amount being fixed at two-thirds of their salary. It may be remarked that this Act was virtually cancelled by the County Courts Amendment Act of 1856 (18 & 19 Vict. c. 108), which fixed the salary of the Judges at the minimum awarded by the former Act, saving only the existing interests of certain Judges to whom the Treasury had already awarded the maximum or nearly the maximum salary. It is to be hoped that this injustice done to

Anomalies of County Court legislation.

* Act to amend the Law of Evidence. 1851.

the Judges will be remedied at no distant period. The present Lord Chief Justice of England, while Attorney General, shewed always a disposition to do justice to the County Courts, but was unable to carry out his views from want of co-operation on part of the higher members of the Administration, of which he was a member. Two other Acts of Parliament passed in 1852 claimed Lord Brougham as their author. The Extension of Copyhold Enfranchisement Act, 15 & 16 Vict. c. 51,* was a step forward in the direction of his suggestions, but did not provide for compulsory enfranchisement to the extent he had always considered practicable. The other Act was the 15 Vict. c. 23† (17th June, 1852), to shorten the time required for assembling Parliament after a dissolution, a measure most desirable for expediting public business. In addition to these statutes, portions of a Bill on Evidence and Procedure introduced by him in 1852, were incorporated into the 15 & 16 Vict. c. 76, and the 17 & 18 Vict. c. 125, styled the Common Law Procedure Acts, being the result of the labours of the commissioners appointed to investigate the subject in 1850, of whom the present Mr. Baron Bramwell was not the least able and assiduous. In 1852 the Act to abolish Masters in Chancery, stat. 15 & 16 Vict. c. 80, passed the Legislature, with the assistance of Lord St. Leonards, then Lord Chancellor. In 1853 the law of evidence was still

1852.

Portions of Lord Brougham's Evidence Bill incorporated with the Common Law Procedure Acts.

* Act to extend the provisions of the Acts for the Commutation of Manorial Rights, and for the gradual Enfranchisement of Lands of Copyhold and Customary Tenure. 1852.

† Act to shorten the time required for assembling Parliament after a Dissolution. 1852.

1853. further opened and enlarged by Lord Brougham's Act enabling husbands and wives to be witnesses against each other, except in adultery and criminal proceedings. The County Court practice had already permitted an innovation on long established practice in this particular. The stat. 16 Vict. c. 20 extended the provisions of the 14 & 15 Vict. c. 99 to Scotland; this improvement was also carried by Lord Brougham in 1853. He also in that year introduced Bills having for their object the giving costs to persons acquitted, the holding of trials in counties adjoining those in which offences should have been committed, and also for the amendment of the law of arbitration. Some of the provisions of the last mentioned Bill were embodied in the New Common Law Procedure Act, the 17 & 18 Vict. c. 125. The only statute which we find due to Lord Brougham in 1854 was the 17 Vict. c. 26,* providing an appeal in cases tried before the County Courts under the 13 & 14 Vict. c. 54. By some oversight the right to appeal had not been included in that statute. He also took charge of Dr. Phillimore's Bill, excluding Ecclesiastical Courts from the cognizance of causes for Defamation, adding a section of his own, whereby relief was extended to persons undergoing imprisonment for the offences at the time of the passing of the Act. It was carried in 1855 and is the 18 & 19 Vict. c. 41.† In the course of the year 1854 he also again presented his Arbitration Law Amend-

Bill giving costs to persons acquitted, similar to that first introduced by Sir S. Romilly.

Arbitration Law Extension and Amendment Bill.

* Act to amend the 13 & 14 Vict. c. 54, respecting the Right of Appeal in certain cases. 1854.

† Act for abolishing the jurisdiction of the Ecclesiastical Courts of England and Wales in suits for Defamation. 1855.

ment Bill and his Bill to empower Summary Process in cases of default of payment of bills of exchange and promissory notes. The latter Bill, as well as one introduced on the same subject by the present Solicitor General, was referred to a Select Committee of the House of Commons, who reported in favour of the latter, and it accordingly passed the Legislature in 1855. It is the 18 & 19 Vict. c. 67.* Two important provisions were imported into it from the Bill of Lord Brougham; one authorising all the parties to a bill of exchange to be proceeded against, and the other requiring payment of the bill and interest into Court, and also security for costs, as the condition of allowing the debtor to defend himself. The proceedings under Sir H. J. Keating's Act being still found to be unnecessarily expensive, the mercantile interest has already expressed itself loudly in favour of Lord Brougham's measure, and it is probable no long time will elapse before public opinion will prevail over professional considerations and private influence. The favourite topic of Education had been once more embarked upon in 1854, as we find that on the 21st July Lord Brougham introduced a Bill for its promotion in corporate towns. By the first section town councils under the 5 & 6 Wm. 4, c. 76, were empowered at a meeting, at which not less than two-thirds should be present, to make a rate for Education purposes, not exceeding sixpence in the pound. The Holy Scriptures were to be read in all the schools established by the Bill, but not as a school lesson-book, with a proviso that no children of parents

1854.

Sir Henry Keating's Bills of Exchange Act.

Bill for Education compulsory by means of a rate.

* Act to facilitate the remedies on Bills of Exchange and Promissory Notes, by the prevention of frivolous or fictitious defences to actions thereon. 1855.

1855. professing the Roman Catholic or Jewish religion should be obliged, except with the parents' consent, to be present at the reading.

In 1855 we have to record one of the most important measures ever passed on the subject of Criminal Procedure. We allude to the Act for the Summary Trial of Offenders (18 & 19 Vict. c. 126),* which followed close upon Lord Brougham's speech on Criminal Law Procedure, delivered in the House of Lords on the 25th of March in that year. The Act is a compound of his Bill, and of one introduced by Lord Cranworth, then Lord Chancellor. When we consider that twenty-eight years had passed away since the summary punishment of offenders was first advocated as an act of justice to the prisoner charged with crime, and in order to obviate the hardship of a long imprisonment before trial if innocent, and if guilty to give him a better chance of returning to an honest course of life, by avoiding the disgrace and stigma attached to a conviction in open court; when also we regard the question in an economical point of view as regards the immense saving of expence to the public, occasioned by the summary process pursued under the Act, we may well admire, however we may regret its results, the extreme caution so long observed in this instance not to impair in the most remote degree the force of any weapon of self-defence which a prisoner may be supposed to possess, and be proud of our laws, imperfect as they still may be, and undoubtedly are, where the people are reluc-

Advantages of Criminal Justice Act.

* Act for diminishing expence and delay in the administration of Criminal Justice in certain cases. (Lord Cranworth's Act). 1855.

tant to reap the most manifest and palpable advantages at the risk of losing one iota of personal right. 1855.

In 1855 Lord Brougham (27th July) brought in a Bill for the further relief of Clergymen dissenting from the Established Church. It was again introduced in the year 1857, with the addition of a proviso that nothing contained in it shall affect the indelible character of Holy Orders. With this restriction, the Bill is considered to have the support of the Episcopal Bench. The year 1856 was signalized by the introduction of the Judicial Statistics Bill,* which, whenever it becomes law, must exert a very powerful influence on the question of Legal Reform. A copious description of this Bill will be found in the Summary prefixed to the chapter on Miscellaneous Acts and Bills. No more safe or sure basis exists whereon to build the superstructure of improvement in Jurisprudence than that furnished by the data of past experience. The published Records of the Court, the Prison, the Police Court, the Penal Colony, the facts and figures illustrative of civil and criminal procedure, furnished in a concise and tabular form, may well have occurred to the mind of Lord Brougham as one of the simplest remedies for the defects in our Legal System which he has so constantly been complaining of. They are, as he observes in the Speech with which he prefaced the introduction of his measure, the plummet and line by which the mariner upon the vast ocean of Legislation may avoid the danger of shoals and quicksands, and at the same time gather in and note down the measure of his progress. Although

1856.

Bill for the collection of Judicial Statistics. Their great advantage as regards Law Reform.

* Bill intituled an Act to make provision for Judicial Statistics. 1856.

1856. the Bill proposed by Lord Brougham has not been accepted by the Government in its fullest and most comprehensive scope and bearing, yet we rejoice to find that the immense importance of the subject has not escaped the reflective and intelligent mind of the Secretary of State for the Home Department. Under his direction a most useful table of Criminal Statistics relating to Commitment, Trial, Conviction and Punishment, including other matters within the cognizance of the Home Office has been compiled and presented to the Legislature. A similar volume is to be annually published, and is intended to comprise, in addition, Civil and Commercial Statistics. The fact that Mr. Redgrave has charge of the preparation of these tables warrants the careful and able execution of the work.

Statistics prepared by Mr. Redgrave, of the Home Office.

In 1856 Lord Campbell's statute for enabling prisoners committed in the provinces to be tried at the Central Criminal Court (19 Vict. c. 16) was a recognition of the principle of Lord Brougham's measure proposed in 1845, and again in 1853, for the removal of prisoners into adjoining counties for the purposes of trial. We have to close this long but interesting catalogue with the labours of 1857, for since that period the frequent changes of administration have almost entirely dammed up the current of useful Legislation. The sudden Dissolution of Parliament in that year, and the late period at which the new House of Commons assembled, greatly interrupted the progress of public business. It was immensely to the credit of Lord Palmerston's Administration that, of the three great questions upon which public opinion and the general feeling of the community had demanded Legislation at their hands during the short session which

Lord Palmerston's Law Reforms in the session of 1857.

sat in the autumn of 1857, viz. Secondary Punishments, the Abolition of the Ecclesiastical Courts, and the Amendment of the Law of Divorce, not one remains postponed or undespatched. That there are defects and shortcomings in the statutes passed upon the first and third of these questions there can be little doubt. These may be removed without much difficulty in a future session. The country nevertheless regards with respect the firmness of purpose, and sense of duty which at no small sacrifice of personal convenience succeeded in carrying, against powerful opposition, two at least of the three measures so long and anxiously expected, but faintly and irresolutely dealt with in former years. Notwithstanding the necessary occupation during the last few months of the Session of 1857, of much time in their discussion in both Houses of Parliament, Lord Brougham was able to introduce his Bill for the relief of Married Women, of which an exposition will be found in one of the Summaries annexed to this Review. He also again presented his Vexatious Litigation Prevention Bill, almost identical with his Arbitration Bills of former years. Neither of these Bills made any progress before a dissolution of Parliament took place.

1857.

Bill for the relief of Married Women.

During the years 1858 and 1859, no important measure connected with the improvement of our jurisprudence took place; in the former, continental politics having to a great extent absorbed public attention, and in the latter, Parliament having been occupied with the discussions consequent upon the introduction, by Lord Derby, of a Bill upon Electoral Reform.

CHAPTER VIII.

General retrospect of measures connected with Law Reform since the commencement of the present century—Many still remain imperfect or hitherto altogether untouched—Necessity for a department of Public Justice—Legislative and Judicial functions of the Lord Chancellor ought to be separated—Appeal in matters of fact in Criminal Cases—Criminal Law Consolidation—General Registry of Title—Extension of Arbitration—Equitable Jurisdiction should be conferred on the County Courts—Rearrangement and more frequent holding of the Circuits—In populous districts localities should be grouped together for the periodical dispatch of civil and criminal business—Public prosecutor—Reflections on Lord Brougham's career, as contrasted with those of Lords Ellenborough and Eldon—Encouraging prospects for the future—The improvement and perfecting of our Jurisprudence a field well worthy of the best and wisest of our Statesmen.

1860.

Review of Lord Brougham's career as a Law Reformer since 1828.

HAVING thus finished the enumeration of the several Acts and Bills carried by Lord Brougham through a series of upwards of forty years, we shall not have completed our task or discharged our duty to the advocates of Law Amendment and to the noble Lord as its fitting representative if we did not briefly recapitulate his triumphs and his failures, not as an eulogium which would be as fulsome and distasteful to the object of it as it would be unbecoming a simple chronicle of events, but as an incentive to vigorous and persevering action on the part of those who, although at an immeasurable distance behind him, are travelling in the same road. We shall not, however, be entering upon the region of panygeric, remembering as we do, that although

1860.

the conduct of public men in its individual parts may justly be canvassed and scrutinized by contemporaries, posterity alone is privileged to adjust their general character, if we note the extraordinary versatility and activity of mind which have been Lord Brougham's distinguishing characteristics. Blessed by Providence throughout his long life with a strength of physical constitution almost unparalleled, he has been able to achieve far greater success, in compassing his ends, than has fallen to the lot of any other Legislator in our history. To the duration of his career it has been owing, that in many instances he has triumphed over opposition, and seen his own convictions ultimately recognised as Truth. Where is the Statesman who could have waited seventeen years to see the establishment of Local Courts, and twenty-three years to be congratulated on the enactment admitting the evidence of parties in their own cause? The list of Acts and Bills appended to the present Review abounds with similar instances; they cannot but strike forcibly the observation from whatever point of view we regard Lord Brougham's extraordinary career. But if the Law Reformer cannot always hope, like him, to see the vintage of his labours, he is not on that account to stand idle and indifferent, leaving to others the burthen and heat of the day. Let him rather imitate that zeal in behalf of the social welfare of the people which has pleaded the cause of Education again and again, and up to the present hour with comparatively insignificant results, yet animated rather than discomfited by failure, perhaps even now is preparing for fresh trials, and marshalling its forces for a more brilliant victory.

The ultimate success attending his measures.

1828.

Great questions prior to the year 1828.

If we contemplate more immediately the subject-matter of the present Review, we shall find that previously to the year 1828, when Mr. Brougham made his memorable speech on Law Reform, three public questions of very considerable interest engaged his attention. The measures he introduced upon by far the most momentous of these, namely, the Slave Trade, were eminently successful. With abolition of slavery his name is imperishably connected. Both of the other two questions, the Law of Libel and Education, have been imperfectly dealt with, and at this day require further solution. As regards the latter, we can never expect it can bear fruit in a degree commensurate with its merits, or the public expectation, until the instruction of the people and their industrial training are to a certain extent compulsory both as regards the contributors of the necessary funds, and the object of them.

Defects in the Law adverted to in 1828 and since remedied.

In 1828 Lord Brougham's speech so often referred to in these pages embraced a vast variety of topics connected with our jurisprudence, and pointed out numberless defects in the system of legal procedure requiring correction. Many of these he was fortunate enough himself to remedy; some, as those relating to the Law of Real Property and Civil Procedure, to the abolition of sinecure offices in Chancery, and to the Judicial character of the Privy Council, at no long interval afterwards; others, connected with the Law of Evidence, of Insolvency and Arrest for Debt, at a later period. Among the most useful measures* since

* Lord Brougham's exertions on behalf of an improved Admi-

1848.

Enumeration of measures connected with Law Reform introduced and carried by Lord Brougham.

introduced by him, and prior to his second speech on Law Reform in 1848, we may enumerate the Central Criminal Court Act, the Act facilitating business in the Court of Chancery, several Acts relating to the Slave Trade, and the Act establishing Local Courts. The last, as it falls considerably short of the original intention of Lord Brougham, by the omission of Equity jurisdiction, and the restriction of the powers of the County Court as a Court of Arbitration, might more properly be classed among those measures which have only been partially adopted, and remain still imperfect—we allude to the statutes respecting Copyholds, Bills of Exchange, Protection from Vexatious Actions, and many others. The Acts constituting the Judicial Committee of the Privy Council are deserving of especial attention, as emanating entirely from Lord Brougham, and passed with little or no alteration. Subsequently to 1848 the Bankruptcy Consolidation Act (12 & 13 Vict. c. 100), the Acts of Parliament Abbreviation Act (13 Vict. c. 21), the Acts amending and extending the Patent Laws (14 & 15 Vict. c. 82, and 15 & 16 Vict. c. 83), the statutes enlarging the Law of Evidence (14 & 15 Vict. c. 99, and 16 & 17 Vict. c. 99), the Act shortening the time for the Meeting of Parliament after a Dissolution (15 Vict. c. 73), are the measures of the most extensive public

nistration of the Poor Laws have not been adverted to, as the Bill introduced in 1834 was not his, but resulted from the labours of the Commission appointed in 1833 to inquire into the subject. He, however, on the 21st July, 1834, moved, when Lord Chancellor, the second reading of the Bill to amend the Poor Laws, which was carried by a majority of 63, and became the statute 4 & 5 Wm. 4, c. 76.

1860. utility and possessing the most general interest. Of the questions as yet unsuccessfully dealt with by him, but we hope to be hereafter more favourably entertained, perhaps the most important in his proposition to appoint a Chief Judge in Chancery, and thus to put an end to that anomaly at the head of our legal system, namely, the combination of the legislative functions with the judicial, which is to be found in the office of the Lord Chancellor as at present constituted.

Necessity of a Department of Public Justice.

The organization of a department of public justice, which is or ought to have been under the consideration of the Government since the year 1856, affords an excellent opportunity for carrying into effect the above suggestion, by placing at the head of the new office about to be established one of the highest and most responsible ministers of the Crown, while it would leave the Lord Chancellor as its legitimate chief or president more ample leisure to devote himself to the business of legislation, and to examine and perfect such measures for the amendment of our jurisprudence* as should be authorized by the administration, and prepared under his direction at the board of the department. The interests of legislation require that the constitution of that board, or of the greater portion of it, should be fixed and permanent in character, otherwise its labours would necessarily be fragmentary and disjointed. Nor is it less important

* To the general consolidation of the statutes there at present appear insuperable difficulties. Lord Brougham wisely commenced this stupendous work with the Consolidation of the Criminal Law, the branch of jurisprudence by far the most capable of definition and simplification.

1860.

that it should be represented in the House of Commons either by one of its members, or by a secretary, ready at all times to assist the Attorney or Solicitor* General both in initiating and forwarding measures, and also to furnish a full explanation of its transactions in the event of any question being discussed in Parliament which should have come under the consideration of the department. The objection made to the removal of the Lord Chancellor from the position now held by him as Chief Judge in Equity, that he would in that case gradually lose the aptitude for judicial functions, and thus become less qualified to preside in the Court of Appeal, applies equally to those law lords who have already passed the office of Lord Chancellor. Yet we do not hear complaints of any want of capacity or judicial acumen in a Lyndhurst, in a St. Leonards, or a Brougham; on the contrary, we often find that the intellect, free from professional bias, and no longer moving in the groove of every day procedure, can take a clearer and more comprehensive view even of subjects strictly legal, much more so when equity has to be eliminated from legal particles.

Answer to the objections raised against the establishment of a Department of Public Justice.

The necessity of a Criminal Appeal in matters of fact to some regularly constituted Tribunal has been already more than once insisted on in these pages. The Home Office now virtually the Court of Appeal, but wanting in all the necessary ingredients of a legal Court being wholly unqualified to decide in the last

Supreme Court of Criminal Appeal.

* The fact of the Attorney General being allowed to take private practice, greatly impedes, if it does not altogether negative, his usefulness as a public servant.

1860.

How such a Court may be established.

instance as to the infliction of Capital Punishments, where fresh evidence has transpired or extenuating circumstances have come to light since the trial, and being obliged to resort to the anomaly of procuring a Royal Pardon in the case of wrongful convictions, it becomes important to consider whether the functions it has hitherto unsatisfactorily discharged, although with the best intentions, should not be transferred to the Department of Public Justice, or whether the existing powers of the present Court of Criminal Appeal in matters of Law should not be enlarged and extended for this purpose to matters of fact, or whether an entirely distinct Court should not be established after the manner of the Cour de Cassation in France.* Whichever be the Tribunal selected, not the least considerable of its duties will be to award compensation to persons unjustly convicted, and to pronounce their innocence with the same publicity as shall have attended the declaration of their guilt.

Criminal Law Consolidation.

General Registry of Title.

Extension of Arbitration.

Reverting to other measures unsuccessfully advocated by Lord Brougham, and which may be said to be still requirements of the present time, we may mention Criminal Law Consolidation, a General Registry of Title for the purpose of securing the possession and facilitating the transfer of Real Property, and the extension of Arbitration as a means of diminishing

* A premature discussion has taken place in the House of Commons during the present session (1860), upon a Bill introduced by Mr. MacMahon, Member for Wexford, in which the chief argument used by the Home Secretary was, that an appeal ought not to be granted, whereas the fact is that the appeal does exist at this moment, but to an illegal and unconstitutional Tribunal.

1855.

litigation and expence. The establishment of a general system of Judicial Statistics may be regarded as a question only of time. Perhaps the list will furnish us with no more valuable proposal than that to confer Equitable Jurisdiction upon the County Courts. The frequency of the occasions on which Lord Brougham has urged this measure on the Legislature, manifests his deep conviction of its necessity. If the poor have a right to have Law administered at their own door, why should Equity be kept at a distance? Equity, which notwithstanding many late improvements is still so difficult of access, and so prolific in delays, that where small sums are at issue it would be insanity to seek redress from the existing Courts. How much injustice would cease to be perpetrated if the dishonest trustee or legatee, or joint inheritor of little properties among the poorer classes had the immediate terrors of a County Court exposure to deter him from his fraud. At present the danger is too remote, uncertain and improbable for him to feel any apprehension of it.

Expences still attending the Courts of Equity.

Whether the County Courts should not have a Criminal Jurisdiction in addition to the Civil which they possess, must be discussed at no distant period, Lord Brougham, in his Speech on Criminal Law Procedure in 1855, pointed out the necessity of this change, by which the power of the magistracy to try prisoners at Quarter Sessions should be transferred to the County Court Judges, the advantage to be thereby gained being the greater frequency of trials, and the shortening of imprisonment before proof of innocence or guilt.

Transfer of criminal jurisdiction of Quarter Sessions to the County Courts.

1860.

More frequent Assizes.

So radical a change in the Local Administration of Justice might perhaps be better effected if more frequent Assizes should be held for grave offences, and in the larger towns, either severally or grouped together within a certain radius, if frequent and periodical Criminal Sittings should take place, after the manner of the Central Criminal Court, under the presidency of a paid magistracy. It is quite clear that if the labours of the County Court Judges are to increase in this direction, a large accession must be made to their present number. Already some of the districts are overworked, and the addition of an Equitable Jurisdiction alone would necessitate the reconstruction and reorganization of the whole County Court System. At no distant period must steps be taken to enlarge and consolidate the whole of the Statutes respecting the County Courts, at the same time to extend their usefulness and to correct some inconsistencies which have crept into their practice.

Equitable jurisdiction of County Courts.

Public Prosecutor one of the greatest requirements of the present day.

The appointment of a Public Prosecutor we should hope would be efficiently undertaken by the present Law officers of the Crown. It is a measure the country has a right to expect from the Government, but has no chance of success in the hands of a member of Parliament unconnected with the Administration. The energy and resolution displayed by the present Attorney General throughout the tedious struggle on the Divorce Bill warrants us in the assurance that Law Reform is an object he has warmly at heart. It is therefore manifestly in the ascendant. The subject of the Divorce Bill leads us by a not unnatural step to Lord Brougham's Bill for relief of Married Women,

1860.

on the expediency of which we confess we entertain some doubts. That women, separated from or deserted by their husbands, should be protected in their earnings and enjoy the fruits of their own industry, there can be little question. A clause in the Divorce Act has properly provided for these cases; but to give married women the absolute dominion over their own property, except were brought into actual settlement, and to give them the control over all personal estate acquired after marriage, so as to defeat the debts and liabilities of the husband, is such a revolution in those social and legal principles which vest in the husband the management of their mutual interests, that, if effected, it must necessarily lead to much matrimonial dissension and unhappiness, and incidentally discourage marriage itself. We record our dissent from such high authority as that of Lord Brougham, with diffidence and reluctance.

Bill for relief of Married Women.

The Parliamentary Session of 1860 has opened with abundant promise on the part of the Administration to introduce measures of Legal Reform, but it may be questioned whether many of these are destined to receive more than slight discussion during the present year. Among the more important of these are, the Bills for the fusion of Law and Equity, for the Simplification of the Conveyance of Landed Property, and for the further Improvement of the Bankruptcy and Insolvency Laws. The last is the most pressing requirement, as these laws are in a most complex and unsatisfactory state. In fact in a Commercial Country like our own, with its trade rapidly increasing, and with the network of credit extending itself in every

Prospects of the Parliamentary session of 1860 touching Legal Reform.

1860. direction over the Industrial area, they demand a careful periodical revision. What was well adapted to Lord Brougham's Consolidation Act in 1849, now requires machinery of a more comprehensive, and above all of a more local character. The County Court system amplified and improved, must inevitably supersede the present cumbrous and costly system of Bankruptcy.

In the mean time Lord Brougham has not been idle during the session lately commenced. While others are cogitating on Law Reforms, and lingering hesitatingly on the threshold, he has laid on the table of the House of Lords a Bill to alter the present unsatisfactory Plea of not guilty in Criminal Pleadings, and to substitute for it the simple question put in the alternative: "Do you wish to be tried for the offence with which you stand charged, or to plead guilty?" Strange, that in 1860 we should be obliged to demonstrate, that if a prisoner's plea of guilty is held to convict him, so as even to found upon that plea the sentence of death, the plea of not guilty ought to bear the same construction as to its meaning, whereas we daily hear in Courts of justice the irrational argument used in effect, that the plea of guilty means every thing, but that of not guilty, nothing. No one has exerted himself more zealously or perseveringly to bring about this desirable alteration of the law, than the Rev. W. C. Osborn, Chaplain of the Gaol at Bath. His able Tract upon this subject was addressed in the shape of a Letter to Sir George Grey, then a member of the Government, as far back as 840, and that no Administration has ever proposed

Abolition of Plea of not guilty in Criminal Proceedings.

1860.

the remedy up to the present time, is a remarkable proof of what Mr. Smiles, in his admirable Book on Self Help, happily calls the inertia of official minds. Should this little work reach a Second Edition, we cordially hope we shall be in a position to add Lord Brougham's Act on Criminal Pleading to it. A fitting Companion to it would be an act abolishing that barbarous custom, disgraceful to our boasted civilization, whereby juries are starved into a wretched unaminity, by the denial to them of warmth and refreshment during the time they retire to consider their verdict. Doubtless all indulgences are open to abuse, and no one would desire to see the time allotted to an earnest and patient investigation of a momentous case, where human life may hang upon the issue of their counsel, devoted to carousal; but under proper safeguards, the mind would approach and deal with a great question more satisfactorily, with the body refreshed and invigorated, than when the retreat is made to a cold, ill-lighted and comfortless chamber, after long and wearisome attention to a case in Court.

Denial of fire and refreshment to juries.

The task we had allotted to ourselves in taking a general survey of the broad map of Legislation, every-eminent individual whose legislative career we have been reviewing, is well nigh done. We write in where dotted and intersected by the labours of the a period when the progress of civilization is rapid, and Law Amendment is moving with accelerated step. Lord Brougham entered upon the path when no political capital was to be found in it, when the journey was rugged, distasteful and unpopular; when colleagues and opponents alike passed by topics which seemed

Concluding observations.

1860.

Lords Eldon and Ellenborough.

only to impede professional advancement; when an Eldon and an Ellenborough both felt and expressed a religious horror at imputations thrown upon the Court of Chancery, and at the audacity which could impugn the justice or policy of sentencing the most trivial offences to the punishment of death. What assistance might not both have rendered to the improvement of our Laws, both profoundly versed in their science and practical working; both of pre-eminent abilities, their exalted station imparting weight and influence to their counsel, the former rich in opportunities afforded by twenty-seven years of almost undisturbed official life! Yet the traveller, entering the church at Kingston, near the beautiful domain which gave relaxation and rest, and a title of nobility to its possessor,* while he reads from the simple tablet upon its walls the narrative of Eldon's extraordinarily successful career, and is willing to pay the tribute of respect to the many admirable qualities of the Lawyer and the Judge, feels regret and disappointment that he can associate with that name not a single measure for extirpating Legal abuses or purifying the Administration of Justice.

Not a single Law Reform to be ascribed to Lord Eldon.

Circumstances favorable to Law Reform at the present day.

Far different is it at the present time. The advocate of Law Amendment has everywhere powerful auxiliaries, in the enlightened progress of public opinion, speaking as one with authority through its organ the press; in the Society† existing especially for this purpose and formed into Committees, con-

* Encombe.

† The Law Amendment Society.

stantly meeting to investigate and discuss defects and consider their appropriate remedies; in Journals* devoted to Jurisprudence, wherein proposed alterations are periodically treated of and subjected to a skilful analysis; lastly, in the fact of these questions exciting more general attention and interest than formerly, and in non-professional men taking far greater pains to understand them. 1860.

To these advantages must be added others of no less weight. In both Houses of Parliament are to be found at the present moment worthy companions of Lord Brougham. We have the mellow wisdom of Lyndhurst, the sagacity of Campbell, the acuteness of Bethell and Kelly to initiate and mature proposals for the simplification or improvement of our Jurisprudence; why should not the new Minister of Justice be shortly at his post? Notwithstanding the somewhat gloomy aspect of the political horizon abroad, requiring the collection of our best means of national defence at home, there is no reason why, in the absence of domestic topics creating much party excitement, we should neglect the concentration of talent and experience upon many great social questions earnestly demanding our attention. In what way can administrative genius and the wisdom of Statesmen be more nobly exercised and displayed than in perfecting the symmetry of our Jurisprudence, or in diffusing those blessings of education, which will render men better Christians and better subjects. How can our

Law Reform well worthy of the attention of the wisest of statesmen.

* The Law Magazine and Law Review, Law Journal, Law Times, &c.

1860.

character as a nation be better elevated and sustained than by shewing to the world that our freedom rests solely on Justice as its foundation, and that our Sovereign has no prouder or higher employment than when she promulgates Laws framed by the strong for the benefit and protection of the weak. Let Lord Brougham then go on and prosper. He has the cordial wishes of the community for his continued health and vigour. He can add little to his reputation; but he has told us he cannot, even now, at his advanced age, live without labour; and we may say in our turn, without flattery, that that labour cannot be unproductive of public advantage. May his Acts and Bills, recorded in this volume, be far from being the last!

LIST OF ACTS AND BILLS

INTRODUCED OR CARRIED BY LORD BROUGHAM.

[N.B.—*The Acts and Bills are arranged, not according to their respective dates, but according to the order in which they are mentioned in the Summaries.*]

SECTION I.

THE SLAVE TRADE.

1811.

Slave Trade Felony Act.

In 1811 Mr. Brougham carried, without a dissenting voice, the Slave Trade Felony Act, 51 Geo. 3, c. 23. He had announced it on the 14th June, 1810, when he moved an Address to the Crown, which was unanimously adopted by the House of Commons. By the Abolition Act of 1807, forfeitures and pecuniary penalties were the only consequences of violating the law; but these proving ineffectual, because the enormous profits of a successful voyage indemnified those whose vessels might be captured in other voyages, it became necessary to treat slave trading no longer as a breach of the revenue laws but as a crime. The Felony Act was most successful in its results.

1837.

As far as British subjects were concerned, the slave trade was extirpated. In 1824 the offence was made capital, and continued so until 1837, when it was again made clergyable as by the Act of 1811, but the punishment of transportation for life, instead of fourteen years, was found to be no less effectual.

Act making Slave Trading by British subjects in foreign countries felony.

In 1839 Lord Brougham carried the Act 2 & 3 Vict. c. 73, for the purpose of condemnation by the Court of Admiralty of Portuguese Slave Traders. In 1843 he carried, with little opposition, the Act 6 & 7 Vict. c. 98, making slave trading by British subjects in foreign countries felony. The Slave Emancipation Act of 1833, 3 & 4 Wm. 4, c. 73, was the result of the debate in the House of Commons, June 11, 1824, on the Missionary's case. For although the motion of Mr. Brougham to pass a vote of censure on the Government and Court of Demerara, by which Mr. Smith had been unjustly condemned, was lost on that occasion by 146 to 193 votes, yet as Lord Brougham himself remarks "the effect produced by that great discussion was extreme and powerful. The minds of men were turned to the real state of negro bondage; the abuses and oppressions committed in the colonies were fully examined; the Missionary Smith's case became a watch word and rallying cry with all the friends of religious liberty as well as the enemies of West Indian slavery. The cause of negro emancipation has owed more to this case of individual oppression than to all the other enormities of which slavery has ever been convicted."—*Lord Brougham's Speeches*, vol. 2, p. 47.

Act giving compensation to the West India Slave proprietors.

The 3 & 4 Wm. 4, c. 73, had enacted, that from 1st August, 1834, slavery in the British dominions should finally cease, but as a compensation to slave proprietors the sum of twenty millions sterling was awarded to them by the legislature. The slaves were, however, to continue in a state of qualified subjection to their masters, as apprentices, till 1840. In 1838

Lord Brougham introduced a Bill to shorten the period of probation by two years, and prefaced it by a very eloquent speech delivered in the House of Lords on February 28th in that year. After dwelling with forcible language on the horrors and enormities of the middle passage, on the confident predictions made of the lawlessness and anarchy which must ensue from the partial emancipation ceded to the negroes, he thus described the memorable day on which the blessed statute came into operation. "The first of August came, the object of so much anxiety and so many predictions—that day so joyously expected by the poor slaves, so sorely dreaded by their hard taskmasters, and surely, if ever there was a picture interesting, even fascinating to look upon—if ever there was a passage in a people's history that redounded to their eternal honour—if ever triumphant answer was given to all the scandalous calumnies for ages heaped upon an oppressed race, as if to justify the wrongs done them—that picture, and that passage, and that answer were exhibited in the uniform history of that auspicious day all over the islands of the western sea. Instead of the horizon being lit up with the lurid fires of rebellion, kindled by a sense of a natural though lawless revenge, and the just resistance to intolerable oppression, the whole of that widespread scene was mildly illuminated with joy, contentment, peace and goodwill towards men. No civilized nation, no people of the most refined character, could have displayed, after gaining a sudden and signal victory, more forbearance, more delicacy, in the enjoyment of their triumph, than these poor untutored slaves did upon the great consummation of all their wishes which they had just attained. Not a gesture or a look was seen to scare the eye—not a sound or a breath from the negro's lips was heard to grate on the ear of the planter; all was joy, congratulation, and hope. Everywhere were to be seen groups of these harmless folks assembled to

1838.

Speech of Lord Brougham in the House of Lords, Feb. 28, 1838.

1838.

talk over their good fortunes, to communicate their mutual feelings of happiness, to speculate on their future prospects. Finding that they were now free in name, they hoped soon to taste the reality of liberty. Feeling their fetters loosened, they looked forward to the day which should see them fall off, and the degrading marks which they left be effaced from their limbs. But all this was accompanied with not a whisper that could give offence to the master by reminding him of the change. This delicate, calm, tranquil joy was alone to be marked on that day over all the chain of the Antilles. Amusements, there were none to be seen on that day, not even their simple pastimes by which they had been wont to beguile the hard hours of bondage, and which reminded that innocent people of the happy land of their forefathers, whence they had been torn by the hands of Christian and civilized men. The day was kept sacred as the festival of their liberation, as it will ever be kept to the end of time throughout all the West Indies. Every church was crowded from early dawn with devout and earnest worshippers. Five or six times in the course of that memorable Friday were all those churches filled and emptied in succession by multitudes who came, not coldly to comply with a formal ceremonial, not to give mouth worship or eye worship, but to render humble and hearty thanks to God for their freedom at length bestowed."—*Lord Brougham's Speech on Negro Apprenticeship. Speeches*, vol. 2, p. 195.

Sacred festival or colonial freedom.

After proceeding to shew how groundless had been the fears of the planters that their lands would go out of cultivation, but that on the contrary, labour, comparatively free, had in its profitable results immeasurably triumphed over that of slaves, he thus addressed himself to the main question: "It is, my lords, with a view to prevent such enormities as I have feebly pictured before you, to correct the administration of justice, to secure the comforts of the negroes, to

He proceeds to the subject of his resolutions, and urges the immediate

1838.

restrain the cruelty of the tormentors, to amend the discipline of the prisons, to arm the governors with local authority over the police, it is with these views that I have formed the first five of the resolutions now upon your table, intending they should take effect during the very short interval of a few months which must elapse before the sixth shall give complete liberty to the slave. I entirely concur in the observation of Mr. Burke, repeated and more happily expressed by Mr. Canning, that the masters of slaves are not to be trusted with making laws upon slavery, that nothing they do is ever found effectual, and that if by some miracle they ever chance to enact a wholesome regulation, it is always found to want what Mr. Burke calls 'the executory principle,' it fails to execute itself. But experience has shewn that when the lawgivers of the colonies find that you are firmly determined to do your duty, they anticipate you by doing theirs. Thus, when you announced the Bill for amending the Emancipation Act, they outstripped you in Jamaica, and passed theirs before yours could reach them. Let, then, your resolutions only shew you to be in good earnest now, and I have no doubt a corresponding disposition will be evinced on the other side of the Atlantic. These improvements are, however, only to be regarded as temporary expedients—as mere palliatives of an enormous mischief, for which the only effectual remedy is that complete emancipation which I have demonstrated by the unerring and incontrovertible evidence of facts, as well as the clearest deductions of reason, to be safe and practicable, and therefore proved to be our imperative duty at once to proclaim."—*Speeches*, vol. 2, pp. 218, 219.

abolition of the system of Negro Apprenticeship.

A division took place in the House of Lords upon the sixth resolution, moved by Lord Brougham, and accompanying his Bill, to the effect that the system of negro apprenticeship in the colonies should be imme-

Division upon the sixth resolution.

1816. diately abolished. The numbers were—for the resolution 7; against it 31; majority against the resolution 24.

THE SLAVE TRADE.

LIST OF ACTS AND BILLS.

Slave Trade Felony Act, 51 Geo. 3, c. 23.

Act for the Suppression of the Slave Trade, 2 & 3 Vict. c. 73. 1839.

Act for more effectually Suppressing the Slave Trade, 6 & 7 Vict. c. 98. 1843.

Bill for Terminating the State of Apprenticeship in the British Colonies. 1838.

SECTION II.

LAW OF LIBEL AND SLANDER.

No subject connected with the law has engaged the attention of Lord Brougham more deeply and assiduously than the Law of Libel. On his first becoming a member of the Legal Profession, the cases of Drakard and the two Hunts, while they established his reputation for eloquence and ability, rendered him cognizant of the injustice frequently committed by the defects existing at that period in this department of our jurisprudence.

Mr. Brougham's first Libel Law Bill.

In 1816 his Libel Law Bill was brought into the House of Commons. In its preparation he was assisted by Mr. (afterwards Chief Justice) Tindal. It allowed the truth to be given in evidence, not as conclusive, in a prosecution for libel, but as one circumstance to determine upon the criminal or innocent intention. It did not pass the Legislature. In

November, 1830, it was again introduced in the House of Commons, but without more success. In 1843, after inquiry by a Committee of the House of Lords, at Lord Campbell's suggestion the Act 6 & 7 Vict. c. 96, was passed, and afterwards amended by 8 & 9 Vict. c. 75. It embodied the principles of the Bills of 1816 and 1830, but not so fully as might have been desired; for the act is confined to prosecutions for *private* libel and extends not to those of a *public* character. It is still the opinion of many that to permit the truth to be proved in the former case is of very doubtful expediency and justice. Indeed this was the principal ground of objection to the Bills of 1816 and 1830, and provision was made to obviate it in the 6 & 7 Vict. c. 96, by the plea of justification, on the ground of the truth of the matters charged, being coupled with an allegation that it was for the public benefit that they should be published, and by the Court being empowered, in the event of the defendant being convicted after such plea, to consider whether the offence is aggravated thereby and to pronounce sentence accordingly.

1816.
1830.
1843.

Lord Campbell's Libel Act, 6 & 7 Vict. c. 96.

The Bill of 1816 is well described in the *Edinburgh Review* for September of that year. After a full discussion of the defects to be found in the existing law of libel and the remedies applicable to their removal, the Reviewer thus proceeds to describe the measure introduced into the House of Commons by Mr. Brougham. The Bill of last session, the further discussion of which was deferred to next year, proceeds from the principles now developed. It first takes away entirely the power of filing *ex officio* informations in cases of libel and slanderous words; it next abolishes the power of reply unless where defendant has adduced evidence, thus placing Crown prosecutions upon the same footing with all others. It further prevents any such trial from being by special jury, unless both parties consent, thus placing the

Mr. Brougham's Bill of 1816 examined at length in the Edinburgh Review for September in that year.

1816.

offence in question upon the same footing with all crimes of the highest nature, viz., treason and felony, and with all misdemeanors, the proceedings for which do not come from the Crown Office. The bill proceeds to take away the distinction between written and spoken slander, and to provide that the latter may be prosecuted as a misdemeanor. In the next place it allows the defendant, in all prosecutions for libel or seditious or defamatory words, to give the truth of the statement in evidence, after due notice to the prosecutor; but it provides that the jury may, notwithstanding such proof, find the defendant guilty; and that the Court, in passing sentence, may consider such proof either in mitigation or aggravation, and may also consider the giving notice, without offering proof, in aggravation. The next provision is for enabling the defendant to prove that the publication was without his privity, and the jury to convict, notwithstanding such evidence. It further takes away the distinction between words imputing an indictable offence and words generally defamatory, declaring both to be actionable, and thus removing also the distinction in this respect between spoken and written slander. Lastly, it prohibits the truth of the statement from being pleaded in justification to an action whether for libel or words, but enables the defendant, on due notice to the plaintiff, to give it in evidence under the general issue, and the jury to take such evidence into their consideration, but to find a verdict for the plaintiff notwithstanding, if they shall think fit. Such are the provisions of this Bill, omitting some matters of technical arrangement, and if there be any truth in the opinions contained in the above article, it comes within the description given in the preamble, and may be deemed a measure "for the more effectually securing the liberty of the press, which hath been the chief safeguard of the constitution of these realms, and for the better preventing of abuses in exercising the said

Abolition of the distinction between written and spoken slander.

Truth of the statement not to be pleaded in justification, but to be given in evidence.

1838.

liberty, and in using the privilege of public discussion, which, of undoubted right, belongeth to the subject." —*Edinburgh Review*, Sept. 1816, p. 142.

Dissertation on libel prefixed to the Edition of Lord Brougham's Speeches published in 1838.

Prefixed to Lord Brougham's public speeches on the subject of Libel, we find a lucid and argumentative dissertation on its defects as they existed in 1838, the period when the publication appeared. Some of the objections to the law, as it then stood, no longer exist. The truth of the libel in private prosecutions is no longer excluded, nor has the publisher of the libel any longer this great advantage over the party slandered, namely, that he can produce the real libeller as a witness, while the slandered party could not be called. We are indebted mainly to Lord Brougham for this improvement in the law; but the want of a public prosecutor, forcibly dwelt upon as being keenly felt in prosecutions for libel, still remains. "The publication most offensive to decorum, most injurious to the peace of society, will never be visited with punishment so long as it is left with private parties to institute criminal proceedings. Women of delicate nerves, men of weak nerves, persons who because of their invincible repugnance to adopt proceedings of a public kind for the punishment of those who have violated the privacy of domestic life, who are the more fit objects for the law's protection and are the less likely to have committed the things laid to their charge, are surely of all others the most unfit to be entrusted with the functions of public accuser, especially in cases where their own admitted weaknesses are in question, or they are charged with immoralities of which they are quite incapable. The impurity of the slanderous press is effectually secured by this cardinal defect in our system of criminal jurisprudence, although it must be admitted that the exercise of the functions of a public prosecutor, in cases of libel on private character, would be attended in many cases with extreme diffi-

Want of a Public Prosecutor very forcibly dwelt on.

1838.

culty, and would always require a very nice and delicate hand to discharge his duties."—*Speeches*, vol. 1, page 383, Edition 1838. Lord Brougham, having pointed out the difficulty of finding any definition for libel, proceeds to establish by argument that the truth of the libel ought not always to be a defence; in fact, that it is no criterion of innocence or guilt. *Ex officio* informations, he maintains, should always be under the control of the grand jury. At a period when many are favourable to the abolition of this ancient office, it is important to find an eminent proof of its usefulness pointed out by so eminent and profound a law reformer as Lord Brougham. It must never be forgotten that the grand jury constitute the safest shield against any undue exercise of power on the part of the magistracy or the Crown. "In all cases," continues the writer of the dissertation, "the defendant should have right, upon notice, to give evidence of the truth of the libel, not as a perfect justification, but as one element for resolving the question whether or not the defendant is guilty of what is laid to his charge, and if guilty, what punishment he ought to suffer, or what damages he ought to pay." But this right, he maintains, should be confined to the real author of the libel, not extended to the mere publisher. "The advantageous consequences of this arrangement would be, that whoever should lend himself to publish the libels of others, must be content to suffer punishment without the chance of escape, or even of mitigation arising from the matters being undeniably true; while on the other hand the real author would have every inducement to come forward, and would have all the benefit of the truth to which he is entitled."—Page 388. "Nor can it be said, with any correctness," he proceeds to argue, "that this restriction upon the mere publisher is unfavourable to the party complaining of injury to his character, for it is no kind of imputation upon any one who offers to

Importance of the office of grand juries.

Admission of evidence to establish the truth of the libel should not be allowed to the mere publisher.

1838.

meet any charge of his traducer that he prosecutes the hired publisher, without defying him to substantitate his charges, since he gives him, at the same time, full power to escape, by putting forth the true author of the slander."—Page 388. Lord Brougham then goes on to propose various improvements. To encourage prosecutions by private individuals, he recommends that the prosecutor should be entitled to the fine which the libeller has to pay. In criminal informations he suggests that the prosecutor's witnesses, upon whose affidavit the rule is granted, should be produced, as also the witnesses who make affidavit against the rule. In urging that the parties themselves should be examined at the trial, we find him proposing such an extension of the law of evidence to all cases. "Nor does there seem to be any good reason against this permission (*i. e.* for the parties in libel to be produced as witnesses at the trial), except that it is contrary to the general rules of the law of evidence; nor does there again appear to be any good reason for confining such an examination of the parties to the case of libel. It is in no respect contrary to the principles on which the law of evidence should be grounded; and if the examination were extended to other cases, our jurisprudence would only be so much the more improved." Page 390. The dissertation concludes with adverting to the anomaly of trying public libels by a special jury. "There is no good reason why libel or indeed any other misdemeanor prosecuted by the public, should not be referred to the same tribunal, which disposes of the lives and liberties of the subject in the case of all the graver offences known to the law." Page 390. "A prosecution may be instituted against a publication, which no twelve tradesmen or farmers or yeomen in any district can be found to pronounce libellous; and yet the Crown may in such a case have a jury of a higher rank in society whose feelings are

Improvements in the law of libel proposed.

The practice of trying cases of libel with special juries is not rational.

1838. 1856. more tender on the subject, and whose leanings are all to the side of power and all against the free discussion of the press.—Page 375. If the arguments in the two preceding paragraphs are sound, they militate strongly against the proposition to substitute special for common juries in the trial of capital cases, for there would arise a feeling in the minds of the lower classes, from whom criminals, not certainly in all, but in very many cases, come, that they could not have a fair trial if their cases were to receive consideration at the hands of persons whose feelings and habits are not congenial to their own. That Lord Brougham entertains the same sentiments as formerly on the still defective state of the law of libel and slander, is evident from a letter he addressed upon this subject on the 13th December 1856, to the Secretary of the Law Amendment Society.—(*Law Amendment Journal*, December 18, 1856). After adverting to the necessity for discussing at the then ensuing Mercantile Conference the question of criminal breaches of trust (since so ably handled by the present Attorney General), he proceeds to notice the law of libel. "There are other subjects connected with our criminal jurisprudence which may fitly and safely be considered at the present time. An improvement was made in the law of libel some years ago, by permitting the truth of the matter to be given in evidence on prosecutions, under certain restrictions. The Bill which I brought into the House of Commons in 1816 gave this permission to the defendant in all cases, whether of public libel or of private. It was very carefully prepared as to its details, with the valuable assistance of Mr. Tindal (afterwards Chief Justice). The feeling generally entertained in its favour was strong, and I believe nothing prevented it being carried except the frequency of prosecutions by *ex officio* information at that time, which the Bill would have put down. These formed

Special juries not advisable in capital cases.

Reference by Lord Brougham to his own exertions for the amendment of the law of libel.

1856.

on the one side the great argument in favour of the measure, but this raised equally strong objections on the other, and thus the controversy assumed a party character, and the bill was lost. When, in 1830, I again introduced it, state prosecutions for libel had entirely ceased; but being immediately after removed to the House of Lords, the measures for establishing local courts and for improving the proceedings in bankruptcy superseded all others, and I did not proceed with the Libel Bill. Lord Campbell, some years after, undertook the consideration of this important subject, and having referred it to a committee of the Lords, the present Act was passed, which unfortunately is confined to the case of private libel. This restriction I was extremely sorry to find received the high sanction of Lord Denman's approval. It is one of the very few subjects on which I had the misfortune to differ with him; but certainly the reasons which he gave did not shake my opinion. Indeed, the permission to prove the truth seems more questionable in the case of private than in that of state prosecutions; and I well recollect that in 1816 some, who were the most strongly disposed to give this permission when public libel is prosecuted, had great doubts of it should be extended to the case of private slander. That was not my view, however, and I regarded the partial alteration lately effected as beneficial, and consequently as deserving the support of friends to law amendment, and as likely to end in the more complete improvement of our procedure.

Lord Campbell's Act restricted to cases of private libel.

"It may be a question whether the time is not come for a measure which shall embrace the whole law of libel, slander and defamation, for there are several other matters of importance connected with it beside that to which my present remarks have been confined. But in one respect it must be allowed, that the times are favourable to a full and unprejudiced consideration of these questions, all state prosecutions

Favourable opportunity for a more comprehensive statute.

1856. having for many years ceased, and no party feelings being at all likely to interfere with the discussion.

"Believe me, &c.,

"H. BROUGHAM."

LIBEL AND SLANDER.

LIST OF ACTS AND BILLS.

Bill for Securing the Liberty of the Press. 1816.

Act to Amend the Law of Libel, 6 & 7 Vict. c. 96, (Lord Campbell's Act). 1843.

Act for further Amendment of Law of Libel, 8 & 9 Vict. c. 95. 1845.

SECTION III.

EDUCATION AND CHARITIES.

1816. THE friends of Education had long been aware that there existed funds in England which ought to be applied towards the instruction of the people and which were either diverted from that course or were applied in a manner extremely inefficient and very different from the intentions of the donors. The Education Committee of the House of Commons, appointed in 1816, mainly directed its inquiries to this important subject, and after an investigation of some weeks made a report, in which the state and management of many schools in and near the Metropolis were fully detailed. The evidence adduced before the committee brought to light much curious and interesting information connected with endowments for the purposes of education and public charities, and led to grave suspicion that the intentions of the founders had been frequently

Appointment of the Education Committee on Mr. Brougham's recommendation in 1816.

1818.
1819.

frustrated by the misapplication or mismanagement of their bequests. Nothing however was done upon the subject during the session of 1816. The committee was reappointed in the following year, to be again adjourned, without further prosecution of the inquiry, but not until it had made a short report, recommending a grant of money to unendowed schools. The impression, nevertheless, left by the former proceedings remaining very strong, Mr. Brougham, in 1818, again obtained the appointment of the Education Committee, and its attention was first directed to the abuses of charities. A long and most interesting investigation ensued, and the inquiry was extended to the universities and public schools. The labours of the committee were prematurely closed by a dissolution of the Parliament, but not before much very valuable information had been obtained respecting the state of education generally throughout the kingdom. Circulars were addressed to every parish in England, Scotland and Wales, and the replies to these afforded materials for a Digest, which fills three folio volumes. The reports of this committee contain an immense body of evidence; they were the origin not only of the Acts, which will be presently mentioned, but also of the measures for promoting education in 1833 and since that period, of the Privy Council Committee, and the yearly grants. Mr. Brougham, chairman of the Education Committee, considering that public opinion was now in favour of legislation on the subject of charities, and that the question was ripe for Parliamentary discussion, introduced the Bill of 1818, which, having passed through the Commons, was strongly opposed by Lord Eldon in the Lords, and carried by a very small majority. It is the Act 58 Geo. 3, c. 91. It excepted charities having special visitors, as well as those connected with universities, the great schools, and cathedrals. In 1819 the Act was extended to all

Education Committee reappointed in 1818.

Mr. Brougham's Charitable Trusts Act, 58 Geo. 3, c. 91, 1818.

1819. charities, though unconnected with education, but with the same exceptions as in the former statute: it is the 59 Geo. 3, c. 81. It was in one of the stages of this Bill, which had been brought in by Lord Castlereagh, on Mr. Brougham having given notice that he should propose it, that the well-known conflict took place between him and Mr. Peel on the 23rd June, 1819. The commission of inquiry, which had been authorized by the 59 Geo. 3, c. 91, was extended from time to time till 1835, when the Act 5 & 6 Wm. 4, c. 71, was passed, and in 1853 The Charity Trusts Act followed, now in operation.

1820. In 1820 he brought into the House of Commons his first Education Bill, *i. e.* The Parish School Bill. It was withdrawn, at least not persevered with in the following session, in consequence of the great opposition made to it by the dissenting bodies. In 1835 Lord Brougham brought in a Bill for promoting education and regulating charities; but as this Bill is only the germ of subsequent Bills, it is not necessary further to allude to it. In 1837 he again introduced one of his education Bills, and another in 1839. The proposition contained in both Bills for establishing a department of education and giving powers to town councils to form schools and raise rates under the supervision of the department, met with the same opposition as the provisions of the Parish School Bill. Most of the provisions, however, of the Bills of 1838 and 1839 were subsequently introduced into Lord John Russell's Bill, while some of them have been adopted in the administration of the Privy Council. Lord Brougham, in 1839, accompanied his Education Bill with a Bill for regulating charities. The mode of administering charitable funds, suggested in this Bill, is almost identical with that since adopted for dealing with the funds provided from time to time by Parliament for the purpose of advancing and facilitating education. The

The Parish School Bill introduced by Mr. Brougham.

Two more Education Bills introduced in 1838 and 1839.

section providing for the religious education of the children in the Bill of 1839, differs slightly from that to be found in that of 1837. It is worthy of being inserted at length. 1839.

SECTION 26.

Of Lord Brougham's Education Bill, introduced in 1839.

"Provided further, and it is hereby further enacted by the authority aforesaid, that by the rules and regulations of any school to be authorized by the said Commissioners, or to be established by them or under their authority, or to be assisted by them or by their authority with any grant of money, or to be maintained, extended, or improved, in whole or in part, by any rate to be levied under the powers of this Act, or to be enrolled for examination under the powers of the same, it shall be required, as a part of such rules and regulations, that no Catechism shall be taught to, nor Liturgy used by, or attendance on church or other religious observance required of any child or children of any parents of any Protestant dissenting persuasion, or of the Roman Catholic or Jewish persuasion, unless such parents or the guardians of such child or children are willing that such child or children should be taught such Catechism or use such Liturgy, or attend such church or other religious observance."

Section of Lord Brougham's Education Bill, relating to religious instruction.

In 1854 Lord Brougham introduced a Bill to promote Education in corporate towns, by which town councils should be empowered to levy a rate upon the inhabitants, not exceeding sixpence in the pound, for the purpose of establishing, maintaining, and improving schools, such schools, subject to Government inspection and the rights of trustees and visitors, where they had been already established, to be under the entire management and supervision of the town councils. 1854.

Education Bill having clauses giving power to raise the necessary funds by public rate.

1856.

Sir John Pakington's Bill.

This Bill is very similar to that introduced by Sir John Pakington in 1856. The difficulties attending the religious instruction to be given to the pupils have hitherto altogether defeated all Legislation respecting Education on a scale at all commensurate with the requirements. Until this is done, all attempts to repress or check adult crime, either by punishment or reformatory discipline, will be found to be fruitless and unavailing.

EDUCATION AND CHARITIES.

LIST OF ACTS AND BILLS.

Act for appointing Commissioners to enquire concerning Charities in England for Education of the Poor, 58 Geo. 3, c. 91. 10th June, 1818.

Act to amend the stat. 58 Geo. 3, c. 91, for the further extension thereof to other Charities in England and Wales, 59 Geo. 3, c. 81. 6th July, 1819.

Bill for better providing the means of Education for his Majesty's Subjects, (Parish School Bill). 1820.

Bill for Promoting Education in England and Wales. 1837.

Bill for Regulating Charities in England and Wales.

An Act for the better Administration of Charitable Trusts, 16 & 17 Vict. c. 127, (not Lord Brougham's Act, but embodying many of the suggestions contained in his Education Bills).

Bill intituled An Act to promote Education in Corporate Towns. 21st July, 1854.

SECTION IV.

CHANCERY AND PRIVY COUNCIL AND PATENT LAW.

THE statement of 1828 described the failure of justice occasioned by the imperfect construction of the Courts of Appeal from India, the Colonies, the Admiralty and Ecclesiastical Courts. In 1832 and 1833 Lord Brougham carried the two Acts, 2 & 3 Wm. 4, c. 92, and 3 & 4 Wm. 4, c. 41, abolishing the Court of Delegates and creating the Judicial Committee of the Privy Council as the Supreme Court of Appeal for the Colonies and for Ecclesiastical Causes, the House of Lords being that Court for the United Kingdom, except in the above cases. His subsequent Act of 1835, 5 & 6 Wm. 4, c. 83, extended the jurisdiction of the Judicial Committee of the Privy Council to patent cases, giving to that Court the power of enlarging the term. It also further improved the Patent Law in this respect, that it enabled the Privy Council to confirm the letters patent in cases where the patentee was proved not to be the real inventor, but believed himself to be so. It moreover imposed penalties upon persons using the name or stamp of the patentee without his authority. In 1851 Lord Brougham brought in a Bill for further amending the Patent Law. The Government presented another Bill immediately afterwards, and, both being referred to a select committee, a Bill was reported, identical with that of Lord Brougham, with some alterations, and was passed. It is the 14 & 15 Vict. c. 82. This Act constitutes the existing Patent Law. The changes from time to time introduced in the law by Lord Brougham have been of great importance. Those most worthy of observation are introduced by the 2 & 3 Vict. c. 67, and the 7 & 8 Vict. c. 69, whereby the patentee is enabled to

1832.
1833.

Acts abolishing the Court of Delegates and creating the Judicial Committee of the Privy Council.

1851.

Statutes amending the Patent Laws.

1843. 1844. amend his specification, and is no longer bound down by the legal nicety of the Crown having been deceived in the grant, in the event of its turning out that any one part of the invention specified is not new or does not answer its intended purpose, in both which cases formerly the patent right was gone, however original or valuable the other parts might have been. Another improvement is that to be found in the provisions of the 7 & 8 Vict. c. 69 (1844), whereby inventors and their assignees are enabled to obtain an extension of their term without the delay and expense of an Act of Parliament. Thus, Mr. Watt would have been a loser, instead of being remunerated, by his improvement of the steam-engine (which in reality created it), had he not obtained an Act to extend his term; but now a day or two's hearing before the Judicial Committee is sufficient for this important purpose, and during the twenty years that have elapsed since the jurisdiction was given to that Court, no attempt has ever been made to proceed by Bill in Parliament; and, although the application for extension has frequently been refused by the committee, entire confidence has been reposed in its decisions. In some cases the inventors have appeared themselves before the Court, without incurring the expence of counsel, and have succeeded in obtaining the extension of the term.

Act to expedite the remedies of Patentees against infringement of their Patents.

Act to increase the efficiency of the Judicial Committee of the Privy Council.

In 1843 Lord Brougham still further improved the efficiency of the Judicial Committee of the Privy Council by the statute 7 & 8 Vict. c. 38, which enlarged the powers of the Court in respect to appeals from the Ecclesiastical and Admiralty Courts. The Bill, upon which the 7 & 8 Vict. c. 69, above mentioned, was founded, contained a provision for the appointment of two Judges of the Judicial Committee of the Privy Council, with salaries respectively of £1500 and £1200 per annum; but the clause was struck out.

In 1832 Lord Brougham, when Lord Chancellor,

1844.

carried the Act abolishing thirteen great sinecure places in Chancery,* 2 & 3 Wm. 4, c. 111, and in the following year the Act 3 & 4 Wm. 4, c. 94, abolishing and regulating others and extending the jurisdiction of the Rolls.

Act to improve Equity Practice and Procedure.

In 1840, with the concurrence of Lord Cottenham, then presiding in the Court of Chancery, he carried the statute 3 & 4 Vict. c. 94, which enabled the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice Chancellor, to make alterations in the form and mode of equity proceedings. The same statute authorized the salaries of certain officers of the Court to be paid out of the suitors' fund, and compensation to be made to others out of the same fund for the diminution of their emoluments. The Bill introduced by Lord Brougham in 1844 for giving Masters in Chancery original jurisdiction, passed the Lords and was lost in the Commons. This plan was stated to be the less effectual remedy, both at that time and when again introduced in 1851, than the one previously proposed by Master Brougham in 1842, viz. to abolish the Master's Office altogether and make the Equity Judges work out their own decrees, but which, at the time of its suggestion, had been considered too sweeping an innovation. It has nevertheless

Bill to give Masters in Chancery original jurisdiction in Equity.

* These sinecures were in the gift of the Lord Chancellor; some of them amounted to many thousands a year, as the Patentee in Bankruptcy, £9000. Some of them used to be even put into the marriage settlements of daughters, so entirely were they considered as private property. At the time of the abolition, 1832, two of them, worth above £3000 a year, were vacant. The retiring pension of Lord Chancellors was increased by the sum of £1000 a year, not in consequence of the vacant sinecures surrendered by Lord Brougham, but as a compensation for the whole thirteen which were abolished. Accordingly, Lord Chancellors who had received the benefit of those sinecures, or had appointed to them while in office, received the augmented pension equally with Lord Brougham, who had given up those that fell vacant.

1845. 1848.

been fully adopted by the Act of 1852, 15 & 16 Vict. c. 80.

In 1843 Lord Brougham brought in a Bill containing provisions for giving a remedy by way of declaratory suit. After a recital of the advantages which had been found to result in Scotland from parties having an easy method of establishing rights, before the same are contested by any process of litigation, it enacted that persons apprehending any intention in others to dispute their rights, might file a bill against them. To this bill, the parties having adverse claim should be called upon to answer or plead, whereupon it should be in the power of the Court to direct an issue, and after full inquiry make a decree binding on both parties, which should be final as against any subsequent suit or action between them or any persons claiming through them. The Bill was unsuccessful in 1843, and was again introduced in 1845, in company with the eight Bills on Law Reform brought in by Lord Brougham in that year, but did not pass. It was brought forward again in 1848 and in 1854, but met with no greater support.

Both to protect title to real property by means of a declaratory suit.

Nine Bills on Law Reform, introduced by Lord Brougham in 1845.

There remain under this head two or three Bills, the authorship of which is due to Lord Brougham, but which have not received the sanction of the Legislature. In 1834 he proposed to give power to the House of Lords to refer appeals and writs of error to the Judicial Committee of the Privy Council, under certain restrictions, and also to extend to that tribunal authority in matters of divorce. The latter part of the Bill was again introduced in 1845. In 1850 he proposed to appoint a Chief Judge in Chancery, distinct from the office of Lord Chancellor, with a salary of £7000 per annum, to have precedence next after the Lord Chief Justice of the Court of Queen's Bench. The same Bill contains propositions for a Court of Appeal in Chancery, which have been to a great extent adopted in the establishment of the Court now presided over

1850.

Proposed to create a Chief Judge in Chancery distinct from the office of Lord Chancellor.

1850.

by the Lords Justices. The appointment of a Chief Judge in Chancery, without political functions, still remains a want, which must sooner or later be supplied. The last Bill to be mentioned in this Section is one relating to Real Estates vested in Married Women, introduced in 1850, and by which the Court of Chancery is empowered to order and direct married women to execute deeds and dispositions of real estates, in pursuance of the decrees of the Court, without the declaration required by the statute 3 & 4 Wm. 4, c. 74, and without the concurrence of their husbands.

Act to enable married women to execute deeds and to dispose of real estates.

CHANCERY, PRIVY COUNCIL AND PATENT LAW.

LIST OF ACTS AND BILLS.

Act for transferring the Powers of the High Court of Delegates, both in Ecclesiastical and Maritime Causes, to his Majesty in Council, 2 & 3 Wm. 4, c. 92. 1832.

Act for the better Administration of Justice in his Majesty's Privy Council, 3 & 4 Wm. 4, c. 41. 1833.

Act to Amend the Law touching Letters Patent for Inventions, 5 & 6 Wm. 4, c. 83. 1835.

Bill intituled an Act to amend the Law touching Letters Patent for Inventions. 1835.

Act to simplify the Forms of Appointments to certain Offices, and the manner of passing Grants under the Great Seal, 14 & 15 Vict. c. 82. 1851.

Act to Amend the stat. 5 & 6 Wm. 4, c. 83, touching Letters Patent for Inventions, 2 & 3 Vict. c. 67. 1839.

Act to make further Regulations for facilitating the Hearing of Appeals and other matters by the Judicial Committee of the Privy Council, 6 & 7 Vict. c. 38. 1843.

1832 to 1852.

Act for Amending the stat. 3 & 4 Wm. 4, c. 41, intituled An Act for the better Administration of Justice in his Majesty's Privy Council, and for extending its Jurisdiction and Powers, 7 & 8 Vict. c. 69. 1844.

Act for Amending the Law for granting Patents for Inventions, 15 & 16 Vict. c. 83. 1852.

Form of Letters Patent under the 15 & 16 Vict. c. 83.

Act to Abolish certain Sinecure Offices connected with the Court of Chancery, and to make Provision for the Lord High Chancellor on his Retirement from Office, 2 & 3 Wm. 4, c. 111. 1832.

Act for the Regulation of the Proceedings and Practice of certain Offices of the High Court of Chancery in England, 3 & 4 Wm. 4, c. 94. 1833.

Act for facilitating the Administration of Justice in the Court of Chancery, 3 & 4 Vict. c. 94. 1840.

Act to Abolish the Office of Master in Ordinary of the High Court of Chancery, and to make Provision for the more Speedy and Efficient Despatch of Business in the said Court, 15 & 16 Vict. c. 80. 1852.

Bill intituled An Act for giving a Remedy by way of Declaratory Suit. 1843, 1845, 1848 and 1854.

Bill intituled An Act to Alter and Amend the Appellate Jurisdiction of the House of Lords and for other purposes. 1834.

Bill intituled An Act for Extending the Jurisdiction and Powers of Her Majesty's Privy Council in cases of Divorce. 1845.

Bill intituled An Act to enable the High Court of Chancery to give effect to its Decrees in cases where Real Estate is vested in Married Women. 1850.

SECTION V.

REAL PROPERTY.

1828.

THE statement of 1828 described the great defects then existing in the Law of Real Property and pointed out the remedies. Among such imperfections were the periods of limitation too long in all cases; in some no limitation by any length of time—absurdities of real actions,—the antiquated framework of fines and recoveries—subtilties as to contingent remainders and executory devises—the bandying of parties to and fro from common law to equity and from equity to common law. All these glaring anomalies have now been corrected; some by the Wills Act, 1837, 7 & 8 Wm. 4, c. 26, recommended by the Common Law Commissioners and introduced by Lord Langdale, then Master of the Rolls, but especially by the Acts also having their sanction, and brought in by Lord Brougham in 1833. We allude to that for Limitation of Actions and Abolition of Real Actions (60 in number), viz. 3 & 4 Wm. 4, c. 27, that altering the Law of Inheritance as to half blood and debts, 3 & 4 Wm. 4, c. 106, the Abolition of Fines and Recoveries Act, 3 & 4 Wm. 4, c. 74. Lord Lyndhurst strenuously assisted in passing these statutes and also the Act introduced by Lord Brougham in 1833, on the recommendation of the Common Law Commissioners of 1828, in order to remedy many of the defects pointed out in the statement of that year, as regarded Pleading and Procedure. This was the statute 3 & 4 Wm. 4, c. 42. The other defects have been since removed by the Common Law Procedure Acts of 1852 and 1854, especially the latter statute, 17 & 18 Vict. c. 125. The statement of 1828 described other evils in the existing Law of Real Pro-

Various measures for facilitating the transfer and conveyance of Real Property.

Assistance rendered by Lord Lyndhurst.

Common Law Procedure Acts, 1852 and 1854.

1845.

Real Property Acts.

perty, especially as to transfer, and pointed out remedies. In 1845 three of the nine bills which Lord Brougham brought in referred to that subject, and were carried, viz. the Act to Facilitate the Conveyance of Real Property, 8 & 9 Vict. c. 119, the Facilitating of Leases Act, 8 & 9 Vict. c. 124, and the Act to render unnecessary the assignment of Attendant Terms, 8 & 9 Vict. c. 112. Respecting these Acts, it is to be observed, that the solicitor of the Duke of Cleveland stated, in his client's presence, at a meeting of the Law Amendment Society, that they had saved him nearly £5000 in the conveyancing business of his estate in one year. In 1833 Lord Lansdowne had postponed all transactions respecting his property until the Acts of that year had come into operation, as he regarded the saving that would be thereby effected as of great importance.

Lord Tenterden's Acts relative to Church Property, passed in 1832.

As to Church Property, Lord Tenterden adopted, by two very important statutes, 2 & 3 Wm. 4, c. 71, and 2 & 3 Wm. 4, c. 100, in 1832, Lord Brougham's suggestions made in 1828, and sanctioned by the recommendation of the Real Property Commissioners. By the former of these statutes, after recital of the inconvenience and injustice resulting from its having been necessary to shew that the enjoyment of rights of common and other profits *à prendre* existed prior to what had been legally termed "time immemorial," enacted that such claims should not be defeated after thirty years, by shewing the commencement before that period, and should be absolute and indefeasible after an enjoyment of the right for the full period of sixty years. By another section a similar enactment applies to claims of right of way or other easement, the respective periods being twenty and forty years. Moreover, a claim to the uninterrupted use of light for twenty years is made to confer an absolute right to the same, except where it is shewn to have been given by consent.

1849.

By the latter statute a claim for a *modus decimandi* in the payment of tithes, or a claim to total exemption from payment of tithe, may be established by shewing the render of such *modus* and the non-payment of tithe for a period of thirty years.

Bill for further facilitating the conveyance of Real Property.

In 1849 Lord Brougham introduced a Bill to amend and extend certain provisions of the conveyance of Real Property Act, 8 & 9 Vict. c. 119, in order to subject all deeds, wills, and other instruments to the same rules in taxation of costs as in that statute. The Bill did not then pass, and was again introduced in 1854, without more success.

In 1846 Lord Brougham brought in a Bill to facilitate the conveyance of Real Property, the object of which was the same as that sought by the Facilitating of Leases Act, viz. to simplify and shorten the proceedings, and to lessen the expence of conveyancing. It has hitherto met with powerful opposition, and its success will probably be postponed until a larger instalment of Law Reform shall have been wrung from the Profession and ceded by the Legislature.

1850.

The Lunatic Trustees and Mortgagees Act, 13 & 14 Vict. c. 50.

In 1850 Lord Brougham carried the statute 13 & 14 Vict. c. 50., by which the Lord Chancellor is empowered to convey estates of lunatic trustees and mortgagees, and transfer stock standing in their names, and also to transfer stock standing in the name of any deceased person, whose personal representative is a lunatic or of unsound mind, and to convey the estates of infant trustees and mortgagees. The Act contains many important provisions, by which the Court is authorized to make orders in various cases of estates vested in trustees.

COPYHOLDS.

1841.

Copyholds.

Copyhold Enfranchisement Bill introduced by Lord Brougham.

The antiquated state of the law respecting Copyholds had attracted the attention of Lord Brougham at a very early period, but it was not until 1841 that he introduced into the Lords his Copyhold Enfranchisement Bill. Previously to that time the Real Property Commissioners had observed, in their report, upon the serious inconveniences attending this description of tenure, upon the multiplicity and uncertain nature of the customs in different manors, the liability to fines, the check to the improvement of agriculture caused by the inability on the part of both landlord and tenant without mutual consent to deal with mines and minerals, and the vexatious and oppressive payments to which owners of copyhold property were subjected. These observations had been confirmed by the Select Committee of the House of Commons, appointed to consider the question of Copyhold Enfranchisement, and who declared it as their opinion, in the report published on the 13th August, 1838, that this tenure was "a blot on the juridical system of the country." Lord Brougham's Bill aimed at the removal of this obsolete remnant of the Feudal System, but the compulsory clauses in it were struck out in the Select Committee of the Lords, as this portion of the measure was considered to be attended with insuperable difficulties, an opinion in which Serjeant Stephen, in his very learned Edition of Blackstone's Commentaries, appears to concur. Lord Brougham's Bill, thus materially altered and abridged, constitutes the 4 & 5 Vict. c. 35, since amended by 6 & 7 Vict. c. 23, and 7 & 8 Vict. c. 55. By degrees, however, a considerable portion of the compulsory provisions has been adopted, and the Act of 1852 (15 & 16 Vict.

Report of the Select Committee of the House of Commons on the enfranchisement of Copyholds, 1838.

Acts passed in 1841 and 1852.

c. 51), which borders closely upon compulsory enfranchisement, will soon probably be followed by the complete measure. To the able and persevering exertions of Mr. James Stewart, this great, although gradual, improvement of the law has been chiefly owing. 1852.

REAL PROPERTY.

LIST OF ACTS AND BILLS.

Act for the Amendment of the Laws respecting Wills, 7 & 8 Wm. 4 & 1 Vict. c. 26. 1837. (Lord Langdale's Act.)

Act for the Limitation of Actions and Suits relating to Real Property, and for Simplifying the Remedies for trying the rights thereto, 3 & 4 Wm. 4, c. 27. 1833. (Founded on the Report of the Real Property Commissioners.)

Act for the Amendment of the Law of Inheritance, 3 & 4 Wm. 4, c. 106. 1833. (Founded on the Report of the Real Property Commissioners.)

Act for the Abolition of Fines and Recoveries, and for the Substitution of more simple Modes of Assurance, 3 & 4 Wm. 4, c. 74. 1833. (Founded on the Report of the Real Property Commissioners.)

Act to facilitate the Conveyance of Real Property, 8 & 9 Vict. c. 119. 1845.

Act to facilitate the Granting of certain Leases, 8 & 9 Vict. c. 124. 1845.

Act to render the Assignment of Satisfied terms Unnecessary, 8 & 9 Vict. c. 112. 1845.

Act for Shortening the time of Prescription in certain cases, 2 & 3 Wm. 4, c. 71. 1832. (Lord Tenterden's Act, embodying the Suggestions of Lord Brougham, made in the statement of 1828.)

1828 to 1852.

Act for Shortening the time required in claims of Modus Decimandi, or Exemption from or discharge of Tithes, 2 & 3 Wm. 4, c. 100. 1832. (Lord Tenterden's Act, embodying the Suggestions of Lord Brougham, made in the statement of 1828.)

Bill intituled An Act to facilitate the Conveyance of Property. 1846.

Act to Consolidate and Amend the laws relating to the Conveyance and Transfer of Real and Personal Property, vested in Mortgagees and Trustees, 13 & 14 Vict. c. 60. 1850.

Bill to Amend and extend the stat. 8 & 9 Vict. c. 119, for the purpose of lessening the costs of transferring Real Property.

Bill for the Enfranchisement of Lands of Copyhold and Customary Tenure, and other Lands subject to Manorial Rights. 1841.

Act for the Commutation of certain Manorial Rights in respect of Lands of Copyhold and Customary Tenure, and in respect of other Lands subject to such Rights, and for facilitating the Enfranchisement of such Lands, and for the Improvement of such Tenure, 4 & 5 Vict. c. 35. 1841.

Act to extend the Provisions of the Acts for the Commutation of Manorial Rights, and for the gradual Enfranchisement of Lands of Copyhold and Customary Tenure, 15 & 16 Vict. c. 51. 1852.

SECTION VI.

CRIMINAL LAW.

1828. 1834.

It has been already observed (*antè*, *Analytical Review*) that the Speech delivered by Lord Brougham on Law Reform, 1828, touched neither Commercial Law nor Equity, and, as regards Criminal Law, adverted only to the increased facilities afforded to prosecutions, by the Bill which had been lately introduced by Mr. Peel for defraying the payment of witnesses and prosecutors out of the county rates. Nevertheless, in 1834, when Lord Chancellor, he carried, without opposition, the Act for establishing the Central Criminal Court, 4 Wm. 4, c. 36, giving, to a population of nearly three millions, the benefit of monthly sittings for the trial of offences, a measure which might at the present time be beneficially extended to the large provincial towns. The appointment of a Public Prosecutor, intended by Lord Brougham to form a supplement* to the same statute, was prevented by a change of ministry, which took place immediately after the Act came into operation. At the time the statement of 1828 was made, and afterwards in 1848, when Lord Brougham again brought forward the subject of Law Reform, great hopes were entertained that a Digest of the Criminal Law would receive the attentive consideration of the

Act for establishing the Central Criminal Court.

1848.

* His Lordship stated both in the House of Lords and in his evidence before Mr. Phillimore's Committee, that the intention was to appoint one Barrister to conduct the prosecutions before the Central Court, there having long been a similar practice in Yorkshire, Cheshire and Northumberland; and this was expected to end in the general appointment of a public prosecutor, with deputies, as in Scotland.

1840. 1850. Legislature. In the House of Lords, his Bills, enacting a Consolidated Criminal Code, have been repeatedly introduced, particularly in 1849 and 1850, but their passing has been from time to time postponed from the apprehension that they could not be carried through the Commons. There is no reason why this section, at all events, of the Statute Law should not be codified, as, with few exceptions, all our crimes are capable of simple and positive definition. The prospective establishment of a distinct Department of Justice leads us to hope that this most important subject will pass from spasmodic and fluctuating discussion into progressive action, regular and uninterrupted. In the short Session of Parliament terminated in 1857, Lord Cranworth then Lord Chancellor introduced into the House of Lords two Bills to consolidate the Criminal Law, in the preparation of which Sir Fitzroy Kelly had rendered very valuable aid, but they did not progress to a second reading, there not being sufficient time to maturely consider them.

Consolidation of the Criminal Law frequently urged by Lord Brougham.

1855. In 1855 Lord Brougham brought in a Bill for the Speedy Trial of Offenders who might, when accused of common larceny before two magistrates, elect to be at once tried for the offence of which they should be charged, without the delay of a commitment for trial at the Sessions or Assizes. Two Summary Punishment Bills were introduced into the House of Lords in the Session of 1855, the one by Lord Brougham and the other by Lord Cranworth, then Lord Chancellor. A compound of the two Bills forms the present statute, 18 & 19 Vict. c. 126. Lord Brougham originated the measure in 1854, upon the petition of the magistrates of Cumberland, and suggested that it should commence in the House of Commons. Mr. Aglionby accordingly brought it in, but in the following Session Lord Brougham introduced it into the House of Lords with alterations, while the Lord Chancellor brought in a similar Bill. It may, how-

Bills for the Summary Punishment of Offenders.

Criminal Justice Act.

1827.

ever, be mentioned that, as long ago as 1827, the late Sir E. Eardley-Wilmot, then deputy Chairman of the Warwickshire Sessions, addressed a letter to the magistrates of England to urge the necessity of summary convictions for trivial crimes, on account of the long period intervening between commitment and trial, the consequent injustice to innocent persons, the contamination incurred in the gaol before conviction, and the immense expence incurred by the country in the costly prosecution of offences, which might have been much better summarily dealt with. The proposal, however, met with little support on account of its supposed encroachment on trial by jury and an unwillingness to place additional power in the hands of the magistrates. Lord Brougham does not appear, at all events in the earlier part of his life, to have been favourable to summary convictions, even in the case of juvenile offenders.

Letter of the late Sir E. Eardley Wilmot, in 1827, to the Magistrates of England, recommending summary punishment for trivial crimes.

The statement of 1828 alludes briefly to the facility and encouragement afforded to prosecutions by the payment of expences out of the public purse, but does so only incidentally, as the Criminal Law, in the able hands of the late Sir R. Peel, was at that time undergoing revision.

Payment of the cost of prosecutions out of the Public Purse.

1843.

In 1843 Lord Brougham introduced a Bill to enable the duties of Coroners to be performed by deputy, and also for the purpose of preventing the quashing of inquisitions, upon technical grounds. It was carried without opposition, and is the 6 & 7 Vict. c. 83. Lord Brougham, in 1853, introduced a Bill having partly for its object the giving compensation to persons acquitted—a subject which has lately been much discussed; and we find the following, among his resolutions on Criminal Law Procedure, placed on the Journals of the House of Lords in March, 1855:—"That the costs of every person acquitted or discharged for want of prosecution should be paid out of the county rates, on certificate of the Court before which

Coroner's Act.

Proposition to give costs to persons acquitted.

1855.

he was tried or brought up for trial, or of the magistrate by whom he was discharged." Upon this resolution Mr. Hill, the enlightened and philanthropic Recorder of Birmingham, has the following remark in his valuable work, lately published, on the Repression of Crime: "May this just provision soon find its way into our Statute Book."—*Hill on Repression of Crime*, p. 19.

Remark by the Recorder of Birmingham.

A similar proposal made in 1808 by Sir Samuel Romilly.

It is remarkable that Sir S. Romilly introduced a Bill on this very subject into the House of Commons on the 18th May, 1808, but withdrew it in consequence of the opposition he met with from Mr. Perceval and Sir T. Plumer, then Attorney General. In his interesting narrative of his own life at this period, we find the following paragraph:—What I have it in contemplation to do, however, compared with what should be done, is very little: it is, in the first place, to invest Criminal Courts with a power of making to persons who shall have been accused of felonies and shall have been acquitted" (*and à fortiori to those who shall have been unjustly convicted*—J. E. E-W.) "a compensation, to be paid out of the county rates, for the expences they will have been put to, the loss of time they will have incurred, the imprisonment and other evils they will have suffered—not to provide that there should be a compensation in all cases of acquittal, but merely that the Court, judging of the circumstances of the case, should have a power, if it thinks proper, to order such a compensation to be paid, and to fix the amount of it."—*Sir S. Romilly's Memoirs*, vol. 2, p. 23.

Extract from a letter to Sir Samuel Romilly from the Rev. Dr. Parr.

Upon this proposition of Romilly, Dr. Parr, in a letter to him, makes the following observations:—"If the laws create the inconvenience to innocent men, common sense and common justice seem to require that the very same laws by which their sufferings are occasioned and their innocence has been proved, should provide for their speedy and plenary redress."—*Memoirs*, vol. 2, p. 260.

1845.

In 1845 Lord Brougham brought in a Bill for furthering the Administration of Criminal Justice, by the provisions of which her Majesty in Council might appoint certain counties to be grouped together for the purpose of authorizing prisoners charged with certain offences to be tried in a different county from that in which the offence should have been committed. One of the objects aimed at by the Bill, viz. to secure to prisoners a fair and impartial trial, in cases where public feeling has been strongly agitated by the heinous nature of the crime, has been obtained by Lord Campbell's late Act empowering the Court of Queen's Bench to order certain offenders committed in the provinces to be tried at the Central Criminal Court (stat. 19 Vict. c. 26, 1856.) Another object was to prevent the necessity of holding Assizes in small counties where the business, both criminal and civil, is comparatively light. The latter question has again come under discussion, since the appointment of the Commission for inquiring into the Circuits; but it is not understood that the Commissioners are at all in favour of the alteration proposed by Lord Brougham. The title of the Bill will be found in the tenth Section, among the miscellaneous Acts and Bills.

Bill for grouping together certain counties, for the more advantageous mode of trying prisoners.

Lord Campbell's Act to transfer criminal trials to the Central Criminal Court.

CRIMINAL LAW.

LIST OF ACTS AND BILLS.

Central Criminal Court Act, 4 & 5 Wm. 4, c. 36. 1834.

Bill, intituled An Act for Consolidating and Amending so much of the Criminal Law as relates to Incapacity to Commit Crimes, Duress, the Essentials of a Criminal Injury, Criminal Agency and Participation, and Homicide, and other Offences against the Person. 1849.

1828. Act for diminishing Expence and Delay in the Administration of Criminal Justice in certain cases, 18 & 19 Vict. c. 126. (carried by Lord Chancellor Cranworth.)

Bill intituled An Act for the more Speedy Trial and Punishment of Offenders in certain cases. 1855.

Act to Amend the Law respecting the Duties of Coroners, 16 & 17 Vict. c. 83. 1843.

SECTION VII.

BANKRUPTCY AND INSOLVENCY.

1828. 1838. THE speech delivered in 1828 on Law Reform, while it exposed the injustice and cruelty of imprisonment for debt except in cases where the debtor withheld his property, or concealed his transactions, or had been guilty of fraud, shewed at the same time the evils of all arrest on mesne process. Lord Brougham, at a subsequent period, strongly opposed the exemption from arrest in execution of persons having Privilege of Parliament, and of Peerage. (Miscellaneous Bills, *post*, Sect. 10.) In 1838 arrest on mesne process was abolished by 1 & 2 Vict. c. 110; in 1844, by Lord Lyndhurst's Act, 7 & 8 Vict. c. 96; and by Lord Brougham's Acts, 1842, 5 & 6 Vict. c. 116 and 5 & 6 Vict. c. 122. All imprisonment for debt, simply as such, is now abolished, and no bankrupt debtor can be imprisoned, unless he is contumacious or fraudulent. In the case of a judgment summons under the 98th and 99th sections of the County Court Act, 9 & 10 Vict. c. 95, proof of inability to pay precedes the commitment to prison. What remains to be done is, to make the imprisonment in *all* cases of Insolvency, as it is in Bankruptcy, *after* the inquiry and order of the Court, so far as this can be done without injuring the security of the creditor, and in most cases after verdict of a jury. In cases of Insolvency before the County

Abolition of mesne process by Lord Lyndhurst's Act.

Court Judges, there exists at present this great defect, that the remand to prison, after proof and exposure of delinquency in open Court, is at the suit of the detaining creditor, and it not unfrequently occurs that by compromise with him, the insolvent regains his liberty a few hours after the delivery of the judgment. 1838.

In 1831, Lord Brougham, when Lord Chancellor, carried the Act, entirely changing the administration of the Bankrupt Law, by establishing the Court of Bankruptcy, and abolishing the seventy Commissioners. This was the 1 & 2 Wm. 4, c. 56. And in 1849 he carried the Bankruptcy Consolidation Act, 12 & 13 Vict. c. 106. The Bill was slightly altered in the Commons. Act establishing the Court of Bankruptcy. 1849. Bankruptcy Consolidation Act.

Before this period two Acts had passed the Legislature under the same superintendence. The first of these, viz. the 7 & 8 Vict. c. 70, 6th August 1844, had for its object the protection of debtors who should wish to make arrangements for the payment of their creditors under the control and direction of the Court of Bankruptcy, and should petition the Court for that purpose, setting forth a true account of their liabilities and estates. The other Act, viz. the 11 & 12 Vict. c. 86, came into operation on the 31st August, 1848, and empowered Commissioners in Bankruptcy to order the immediate release from prison of debtors who had surrendered to their fiat, and obtained protection from arrest, but who were in prison for debt at the time of such protection being given to them. The rights of the creditor at whose suit the debtor was imprisoned, were not, however, otherwise interfered with, except as to the right of detaining him in prison. 1844. Other statutes relating to Bankrupts.

In the present Session (1860) Sir R. Bethell, Attorney General, has introduced a very able and comprehensive measure on the subject of Bankruptcy and Insolvency, which will in all probability pass the Legislature without much opposition. 1860.

1828. BANKRUPTCY AND INSOLVENCY.

1849. LIST OF ACTS AND BILLS.

Act for the Relief of Insolvent Debtors, 5 & 6 Vict. c. 116. 1842.

Act to Establish a Court in Bankruptcy, 1 & 2 Wm. 4, c. 56. 1831.

Act for the Amendment of the Law of Bankruptcy, 5 & 6 Vict. c. 122. 1842.

Act for facilitating Arrangements between Debtors and Creditors, 7 & 8 Vict. c. 70. 1844.

Act to empower Commissioners of the Court of Bankruptcy to order the release of Bankrupts from Prison in certain cases, 11 & 12 Vict. c. 86. 1848.

Analysis of Bankruptcy Consolidation Act, 12 & 13 Vict. c. 106. 1849.

SECTION VIII.

LOCAL COURTS.

1830. On the 29th April, 1830, Mr. Brougham brought before the House of Commons the subject of Local Courts, in an elaborate speech, and obtained leave to introduce a Bill for their establishment. The consideration of it was however postponed until the following session, that its details might, in the meanwhile, undergo public discussion. It was then again introduced in the House of Lords, Lord Brougham having, in the meanwhile, become Lord Chancellor, and on the suggestion of Lord Lyndhurst was referred to the Common Law Commissioners, who reported in favour of the greater portion of it. In 1833 it was again brought into the Lords, where it was lost, by a majority of two. A partial remedy, for the difficulty

Mr. Brougham's speech on Local Courts, and Bill introduced.

Again brought in in 1833.

and expence encountered in recovering debts of small amount, was however afforded by the improvement of Proceedings under Writs of Enquiry by the 3 & 4 Vict. c. 52; but this statute being found wholly inadequate, and public opinion being strongly in favour of Lord Brougham's measure, Lord Lyndhurst, Lord Chancellor, brought in the Bill again in 1846, and it had almost passed, when the Ministry was changed, and their successors carried it. It is the well known County Courts Act, 9 & 10 Vict. c. 95. It omitted, however, some of the best portions of Lord Brougham's Bill, viz., those which gave to the new Local Courts jurisdiction in Equity and Bankruptcy, and constituted them Courts of Reconcilement, while it reduced the amount to be sued for from £100 to £20 in the ordinary jurisdiction. In 1850 a further portion of the measure was ceded by the extension of the jurisdiction to £50, under the statute 13 & 14 Vict. c. 61. This was Mr. Fitzroy's Bill, which the Government opposed under the auspices of the late Lord Chief Justice Jervis, then Attorney General, but which, nevertheless, passed the Commons. In the Lords there was introduced, from the Bills of 1830 and 1833, an important provision, namely, the Optional Jurisdiction Clause, which, however, has been found much less operative than it would have been, by the refusal to make an obvious amendment, in allowing the action to be brought and empowering the defendant to remove or stay it, if he should refuse his consent to try it in the County Court. This defect is even yet more visible in the 18 & 19 Vict. c. 108, which professed to extend the jurisdiction by the admission of causes hitherto excluded. Practically the extension is inoperative, as no defendant will spontaneously do any act by which the plaintiff is enabled to take the aggressive, and cause him to incur expence, even although that expence should be less in consequence than if the action had been brought in the Superior Courts. It is hoped that in any

1833.
1846.

Local Courts Bill brought in by Lord Lyndhurst and carried in 1846.

Omission of several important portions of Lord Brougham's measure.

1850.

Further extension of the County Courts Act.

Defects of the Act, 18 & 19 Vict. c. 108.

1854.

future County Courts Bill this manifest error will be rectified.

Act carried by Lord Brougham in 1854, to remove a defect in a previous statute.

A defect having been discovered in the 13 & 14 Vict. c. 61, viz., that there was no provision giving a right of appeal in cases where the County Court had jurisdiction by consent under the 17th section, Lord Brougham brought in and carried a short Act in 1854 giving the same appeal in these as in all other cases sanctioned by the 14th section of the 13 & 14 Vict. c. 61; it is the 17th Victoria, c. 16. The system, imperfect as it still is, and as yet in its infancy, has already been productive of incalculable benefit to the community. The average number of causes tried by these Courts is between five and six hundred thousand a year, and it is probable that half as many more have been rendered unnecessary by settlements out of Court arising from the knowledge of parties that these tribunals are open for cheap and speedy justice.

1857.

Jurisdiction of the County Courts by the present Probate Act.

The Bill introduced by the Lord Chancellor,* and carried in the session of 1857, for the establishment of a new Court of Probate, gives jurisdiction to the County Courts in contentious suits respecting wills, where the amount does not exceed £200 in personalty and £300 in realty, and it is to be hoped that this is the first step towards giving these Courts a general Equity Jurisdiction, as proposed by Lord Brougham, in matters of account, in trusts, and in the construction and enforcing of conveyances of all descriptions up to a certain amount, by his Bill of 1851.

Valuable assistance rendered by Lord Lyndhurst.

In giving this brief history of the establishment and progress of the County Courts, which illustrates, in a remarkable degree, the energy and perseverance of Lord Brougham, we must not omit to mention the very great advantage derived from the powerful assistance and co-operation rendered by Lord Lyndhurst. It is true he threw out the Bill in 1833, but he did so in a manner to obtain Lord Brougham's best thanks in

* Lord Cranworth.

1845.

the House, because he allowed it to go through the committee, and joined in greatly improving it, agreeing to take the debate in the last stage, viz., upon the third reading. Then, when he found the evil resulting from its having been lost, he, with his wonted sagacity and candour, saw and acted upon the necessity of a remedy, first supporting the extension of the sheriff's jurisdiction in Writs of Enquiry, and then bringing in the Bill of 1845, which, though very short of that introduced by Lord Brougham in 1833, yet was a great step, and laid the foundation of the system of Local Courts. It was delayed until the following year in consequence of the Irish members opposing every thing at the end of the Parliamentary session, because they had an Irish measure to carry by defeating a Bill then before the House, which induced them to throw out every other Bill. In the following year Lord Lyndhurst again brought in the Bill, and the Whigs coming into office, succeeded to it and mismanaged it by leaving out a clause (that of the Optional Jurisdiction) which Lord Lyndhurst had agreed to in the House with Lord Brougham. Ever since that period Lord Lyndhurst has been the warm friend and supporter of the system of Local Courts, so that, next to Lord Brougham, he may be considered their author and originator.

Extension of the jurisdiction of the sheriff in Writs of Enquiry.

1846.

The Local Courts Bill introduced by Lord Lyndhurst, but carried by the Whig Ministry.

In 1845 Lord Brougham carried the 8 & 9 Vict. c. 127, by which a creditor obtaining judgment in respect of a debt not exceeding £20 might summon the debtor before a Commissioner of Bankrupts, or Court of Requests, or Court for the recovery of small debts, and in case of the debtor's non-appearance or failing to account satisfactorily for non-payment, or on proof of fraud, he might be committed to prison for a period not exceeding forty days. The provisions of this statute were mainly re-enacted in the following year in the 9 & 10 Vict. c. 95.

Imprisonment of Debtor's Act, 8 & 9 Vict. c. 127.

In 1850 he brought in a Bill to enable two Judges going the circuit to hear and determine appeals from

1850. any County Court within its district, in like manner
1851. as such appeals are now heard in the Common Law Courts at Westminster. Such a measure is greatly required, as the expensive nature of the proceedings hitherto has greatly checked and discouraged appeals from the County Courts.

Proposition to give an appeal from the County Courts to the assizes.

Proposition to give equity jurisdiction to the County Courts,

In 1851 he brought in a Bill for the further extension of the County Courts, in which he again proposed to make them Courts of Reconcilement, so that by consent all matters in dispute whatsoever, whether in law or equity, should be referred to them. The Bill likewise provided that the Judges of these Courts should have the same powers as Masters in Chancery, for the purpose of taking pleas, answers and examinations, of examining witnesses *vivâ voce*, and of inquiring into accounts. The Bill met with much opposition in the Lords in its several stages, but finally went down to the Commons, where many of the most important clauses were struck out and others added, and the Bill was ultimately lost. A clause had been annexed to the report by Lord Brougham, empowering the Lord Chancellor, in the event of the Bill passing, to appoint ten additional Judges of the County Courts. The above Bill was accompanied by another Bill, also introduced by Lord Brougham, in which it was proposed to give to the London Courts of Bankruptcy and to the County Courts power to administer, within their respective districts, in cases of intestacy and partnership, estates and accounts, the personal estates of deceased persons, legacies and residuary legatees, and to appoint new trustees, where the instrument should have given no power of such appointment, or could not be exercised. In 1852 both these Bills were again introduced, but without success, the provisions of the Equitable Jurisdiction Bill being nearly identical with those of the preceding year, those of the County Courts Further Extension Bill containing such clauses only as the Commons had already signified their

and to appoint ten additional Judges.

1852.

Bills on this subject again introduced.

1853. 1854.

assent to. In 1853 and 1854 Lord Brougham brought in his Arbitration Law Amendment Bill, embodying some of the provisions of the County Courts Further Extension Bill, and giving the amplest jurisdiction to County Courts as Courts of Arbitration. Although this Bill met with the same fate as its predecessors on the same subject, the most violent and unaccountable opposition being given by the Judges of the superior Courts, and by the legal profession generally, to any measure for making the Courts of local judicature beneficial and useful to the public to the full extent of which they are capable, yet, fortunately, parts of its most important provisions were assented to and adopted in the second Common Law Procedure Act, 17 & 18 Vict. c. 125, whereby causes can be referred by the Common Law Judges to the Judges of the County Courts, both before and at the time of trial.

Lord Brougham brought in his Arbitration Law Amendment Bill, and County Courts Further Extension Bill, but without success.

17 & 18 Vict. c. 125, referring causes to the Local Courts.

Probably no long period will elapse before the complete measure, so often urged upon the Legislature by Lord Brougham, will be ceded to the growing popularity of these Courts. The jealousy manifested towards them by the Legal Profession in the infancy of their existence is easily to be understood, as it occasioned a derangement to a certain extent of institutions honoured by time and custom; but now that they have gained a permanent footing in the country, the interest of the Public and of the Bar is one and the same; of the former, that their efficiency be extended and be made to embrace all matters cognizable by law and equity to a limited amount, so that advocates highly qualified by talent and integrity may find it worth their while to attend and give weight to the sittings of these tribunals; of the latter, that their respectability be maintained and supported by salaries on a scale sufficiently liberal to induce men of ability and character to seek these offices, and at the same time to feel that the careful discharge of

Remarks on the present position and future prospects of the County Courts.

1833 to 1854.

duties, so important to the administration of Justice, will be considered as the stepping-stone to higher advancement. Thus, not only will the Presidency of these numerous Courts be an object of ambition to the best men, but those men, having obtained the appointments, will have an additional stimulus to that of mere duty and the sense of public responsibility to execute their functions in a manner deserving of the Public approbation.

LOCAL COURTS.

LIST OF ACTS AND BILLS.

Bill (as Amended on Recommitment in the House of Lords) intituled An Act for establishing Courts of Local Judicature. 1833.

Act to Amend the 13 & 14 Vict. c. 54, respecting the Right of Appeal in certain cases, 17 Vict. c. 16. 1854.

Act for the better securing the Payment of small Debts, 8 & 9 Vict. c. 127. 1845.

Bill to Amend an Act to Extend the Act for the more easy Recovery of Small Debts and Demands in England, &c. Giving Appeal to the Circuits. 1850.

Bill intituled An Act for Extending the Jurisdiction of the County Courts to certain matters cognizable in the Court of Chancery. 1851.

County Courts Further Extension Bill. 1851. Clause to be proposed by Lord Brougham on Report, for appointment of ten additional Judges.

County Courts further Extension Bill, with the Amendments made by the Commons. 1851.

Bill further to Extend the Jurisdiction of the County Courts, and to facilitate Proceedings in the High Court of Chancery. 1852.

Bill intituled An Act to amend the Law of Arbitration. 1854.

1828 to 1854.

SECTION IX.

LAW OF EVIDENCE AND PROCEDURE.

Adoption of most of Lord Brougham's suggestions, as made in the Statement of 1828;

especially by the Common Law Procedure Act.

THE statement of 1828 dwelt on the necessity of facilitating compromises, and propounded the means of thus checking litigation. The Procedure Acts of 1852 and 1854, 15 & 16 Vict. c. 100, and 17 & 18 Vict. c. 125, have adopted most of Lord Brougham's suggestions; but the expediency of still further amending the Law of Arbitrament had been strongly insisted on in 1828. The Act of 1833, already referred to, 3 & 4 Wm. 4, c. 42, partially effected this improvement; sects. 39 to 41: but it was done more fully and effectually in the Arbitration Bill brought in by Lord Brougham in 1853 and again in 1854, the greater part of which has been enacted in the Common Law Procedure Act of 1854, 17 & 18 Vict. c. 125. This statute also adopted many of the provisions respecting jury, trial and evidence, especially the comparison of writings, embodied in his Procedure and Evidence Bills, introduced in 1852 and 1853.

His first Evidence Bill, 1845.

As far back as 1845, he had introduced a measure empowering parties to a civil action to be witnesses. Some valuable provisions, however, contained in those Bills, have not hitherto been adopted. Of these, the most important are the empowering prisoners to be tried in an adjoining county to where the offence

1845.

Various suggestions made by Lord Brougham for the improvement of evidence and procedure.

charged against them has taken place; the depriving witnesses of the privilege not to reply to questions tending to criminate them, but with the proviso that the answers to such questions shall not be admissible in evidence against them except in a prosecution for perjury; the making a document admissible, although without a stamp, after a period of ten years, and the entitling persons in every action, suit, or other proceeding, at the instance of the Crown, except in prosecutions for treason, felony, or misdemeanor, to receive costs as in the case of an ordinary suitor. It would be a valuable addition to our criminal jurisprudence if Courts of justice were empowered, even in cases of felony and misdemeanor, to award compensation to persons unjustly accused and convicted of offences, where the circumstances which afterwards come to light shew that they have been wrongfully put upon their trial, and where the circumstances are of an aggravated nature. This improvement would be best effected by the establishment of a solemn Court of Criminal Appeal, instituted for this as well as other purposes. At present the only remedy in such cases is a solemn pardon through the exertion of the Royal Prerogative. Pardon presumes guilt; but what compensation does it afford to those who have unjustly suffered the disgrace of a public trial and the association in gaol with felons of the worst description? This subject has already been adverted to in the Analytical Review and in the Section containing Lord Brougham's Acts relating to the Criminal Law (Sect. VI., *ante*, p. 202).

Compensation to persons proved to have been wrongfully convicted.

The statement made by Lord Brougham in 1828 dwelt largely on the defects and inconveniences of the Law of Evidence. These have now been entirely removed, except as to self-crimination, which was not dwelt upon at that time. It may here be mentioned that Lord Tenterden, in the following year, adopted the suggestion as to requiring written acknowledg-

ments in order to take a case out of the Statute of Limitations. This was done by the statute 9 Geo. 4, c. 14, giving effect to the forcible words of Lord Brougham, where he said, "Prop the main pillar of security against stale and unjust demands, the Statute of Limitations, by a beam from that other bulwark against perjury, the Statute of Frauds."—(*Speech on Law Reform*, 1828. *Speeches*, vol. 2, p. 461.) 1843. Lord Tenterden's Act founded on the recommendation of Lord Brougham.

Lord Denman, in 1843, carried his important Act abolishing the objection of interest to a witness's competency, 6 & 7 Vict. c. 85, and Lord Brougham, after strong opposition on the part of Lord Truro, then Lord Chancellor, finally in 1851 succeeded in passing the statute 14 & 15 Vict. c. 99, enabling and compelling parties themselves to be witnesses in a civil action. The general success attending this measure, though doubtless perjury is the result in some cases, induced Lord Brougham to open the Law of Evidence still further, by the 16 & 17 Vict. c. 82 (20th August, 1853), by which a husband and wife may mutually give evidence for or against each other, except in cases of adultery and criminal procedure. This Act was extended to Scotland by the 16 Vict. c. 20. He had removed other defects pointed out in 1828 by the Documentary Evidence Act, passed in 1848, 8 & 9 Vict. c. 113, by which sealed documents were enabled to prove themselves, and evidence of the signatures of the equity or common law Judges was held to be unnecessary. It is to be noted, that of the nine Bills introduced by him in the session of 1845, four were passed in that year, and the fifth, viz. the Act for examining parties to a civil cause, some years after, namely in 1851.

Lord Denman's Evidence Act, 1843.

Enlarged by that of Lord Brougham in 1851.

Documentary Evidence Act, 1848.

In February 1857, Lord Brougham again introduced his Bill for the Establishment of Courts of Reconcilement, entitled An Act to Prevent vexatious Litigation, which was read a first time prior to the dissolution of the late Parliament. A similar Court 1857. Bill to establish Courts of Reconcilement again introduced.

1848.
1854.

had been previously advocated by the Hon Mrs. Norton, in a letter to the *Times* newspaper, for the purpose of amicably settling matrimonial disputes, without the parties being obliged to have recourse to the expence and painful publicity of the proceedings necessary to obtain a separation or divorce. In 1854 Lord Brougham's Bill for Registration of Dishonoured Bills of Exchange and Promissory Notes, and to allow execution thereon, passed through the House of Lords without a dissentient voice, and is loudly called for by all the commercial interests. It was by mismanagement lost in the Commons. He again introduced it into the House of Lords in the session of 1855, his proposal being to adopt into the Law of England the Scotch system of summary diligence for recovery on Bills of Exchange. The Law of Scotland following the Roman Law and the Law of all European nations, England alone excepted, holds that when a man signs a Bill of Exchange he acknowledges the debt, and gives a warrant of attorney to sign judgment, in case the bill is not paid when it falls due. The interests of the debtor are secured by a provision for the stay of proceedings, in the event of his having a defence to the action, and of his intending to rely on it. Lord Brougham's Bill having passed the Lords, was committed to the able charge of Mr. Atherton, and subsequently, together with the Bill to the same effect introduced by Sir Henry Keating, then Solicitor General, referred to a Select Committee of the House of Commons, which preferred the latter, adopting however two of the most important provisions of the other Bill, viz. that of allowing all the parties to the Bill of Exchange to be proceeded against, and also that of requiring payment of debt into Court and security for costs, as the condition of allowing execution to be stayed and the debtor to defend himself. Lord Brougham, nevertheless, took charge of the Bill to which the Commons had given the preference, and obtained the assent of the Lords

Lord Brougham's Bill for Registration of Dishonoured Bills of Exchange, &c.

Again introduced in 1855.

The Bill goes to the Commons: a Select Committee is appointed, and another Bill is subsequently brought in by Sir H. Keating, Solicitor General; which becomes the statute 18 & 19 Vict. c. 67.

1855.

to it in all its stages, being confident that the omitted portions of the Bill must be hereafter added to it. This expectation has been confirmed by a year's experience of the present Act, by which it has been ascertained to entail far heavier legal expences on the mercantile community than would have followed the adoption of Lord Brougham's Bill. The average cost of a writ of summons and subsequent expence of obtaining judgment under the present Bills of Exchange Act amounts to £3. 15*s*., whereas in Scotland the cost of obtaining judgment in similar cases is 17*s*. 8*d*. In 1856 the number of writs issued in the English Courts under Sir H. Keating's Act was 23,166, and the number of orders for leave to appear and defend was 852. The total expence of obtaining judgment under the present Act amounted therefore to £86,776, whereas, had Lord's Brougham's measure been adopted, altogether instead of partially, it would only have amounted to £22,972. In consequence of these facts, at the great conference of the merchants of the United Kingdom, held in London in January 1857, resolutions were unanimously passed, not only in favour of his Bill as applicable to Bills of Exchange and Promissory Notes, but also in favour of its extension to Money Bonds and all other pecuniary obligations. Lord Campbell has always been a most strenuous supporter of this Bill.

Defects of Sir Henry Keating's Act.

Resolutions passed at a conference of merchants in London, January, 1857.

LAW OF EVIDENCE AND PROCEDURE.

LIST OF ACTS AND BILLS.

Act for further Amendment of the Law and the better Advancement of Justice, 3 & 4 Wm. 4, c. 42. 1833. (The 39th, 40th, and 41st sections).

1833 to 1854.

Bill intituled An Act for further amending the Law of Evidence and Procedure (as Amended on Recommitment in the House of Lords, 1852.)

Bill intituled An Act for further Amending the Law touching Evidence and Procedure in certain respects. 1853.

Bill intituled An Act for enabling Parties to be examined in the trial of Civil Actions. 1845.

Act for rendering a Written Memorandum necessary to the validity of certain Promises and Engagements, stat. 9 Geo. 4, c. 14, 1828. (Lord Tenterden's Act, adopting the recommendation made by Mr. Brougham in his Speech on Law Reform, 1828.)

Act to Amend the Law of Evidence, 14 & 15 Vict. c. 99. 1851.

Act to Amend An Act of the fourteenth and fifteenth Victoria, Chapter ninety-nine. 1853.

Act to Alter and Amend An Act of the fifteenth year of her present Majesty for Amending the Law of Evidence in Scotland, 16 Vict. c. 20. 1853.

Act to facilitate the admission in Evidence of certain official and other Documents, 8 & 9 Vict. c. 112. 1845.

Bill intituled An Act to permit the Registration of Dishonoured Bills of Exchange and Promissory Notes in England, and to allow execution thereon, May 1854 (as Amended by the Select Committee of the House of Lords.)

Act to facilitate the Remedies on Bills of Exchange and Promissory Notes, by the prevention of frivolous or fictitious defences to Actions thereon, stat. 18 & 19 Vict. c. 67. 1855. (Sir Henry Keating's Act.)

Act for the further Amendment of the Process, Practice, and Mode of Pleading in, and Enlarging the Jurisdiction of the Superior Courts of Common Law at Westminster, and of the Superior Courts of Common Law of the Counties Palatine of Lancaster and Durham, stat. 17 & 18 Vict.

c. 125, 1854. (The Sections relating to Arbitration and Evidence only.)
Bills of Exchange Bill, December 1854.

[N.B.—This Bill is almost identical with that of May 1854.]

SECTION X.

MISCELLANEOUS ACTS AND BILLS.

1822 to 1860.

THIS Section will comprise several Acts and Bills introduced by Lord Brougham, but not included in the previous Sections, and ranging over a period from 1822 to the present time. Some of the Bills, although not persisted in, involve principles of a most important character. That entitled "An Act for the more impartial Trial of Offences in certain cases in Ireland," and bearing date 10th August, 1843, was occasioned by the difficulty found, upon trials for sedition and for attending unlawful meetings, in obtaining a conviction in the locality where the offence had been committed. It was not persevered in, by the advice of the Duke of Wellington, and by the promise of vigorous proceedings on the part of the government. These proceedings were taken, and O'Connell was subsequently brought to trial.

Bill for the more impartial trial of offences in Ireland.

1846.

The same Bill was again introduced in 1846. The principle of this Bill was lately recognised in cases of felony when the Act passed (19 Vict. c. 26), by which the trial of Palmer was removed from Stafford to the metropolis, though with the object of obtaining an impartial trial for the prisoner, against whom there had been a strong prejudice; whereas in Ireland the feeling had been even more strongly in favour of the

Again introduced. Lord Campbell's Act (19 Vict. c. 26), identical in principle with the measure of Lord Brougham.

1845.

accused. In 1845 Lord Brougham brought in a Bill of a similar character for England, by which her Majesty in Council might appoint counties to be called connected counties, in any of which persons might be tried for offences committed within the body of such counties, and containing a provision for the payment to witnesses of the increase of their travelling expences caused thereby.

Proposition to group counties for facilitating criminal trials.

Bill to secure the real independence of Parliament.

One of the most important measures proposed by Lord Brougham and hitherto without success, is embodied in his Bill to secure the independence of Parliament, first introduced in 1845, by which the issuing of any judgment for debt and costs in any action or suit, followed by unproductive execution, should disqualify a Peer or Member of the House of Commons from sitting or voting in Parliament, as is the case with bankrupts.

After the expiration of twelve months from the judgment, or one month after the affirmance thereof on writ of error, the seat was to be declared void, and the Speaker was to issue his warrant for another election. The Bill did not meet with much favour from the Legislature, but was again introduced in 1848, first on the 8th of June, and afterwards on the 6th of July, with the addition of a clause by which it was provided, that on production of a certificate from the Court in which judgment had been obtained of all demands having been satisfied, the Peer or Member might be again qualified to sit or vote in Parliament. The Bill on these occasions also was unsuccessful.

Again introduced in 1848.

1842.

In 1842 Lord Brougham brought in a Bill to repress Bribery and Intimidation at Elections, by which it was proposed to give an indemnity against Penal Actions, Criminal Prosecutions, and Penalties to all persons making a true and faithful disclosure, before a Committee of the House of Commons, of the bribery and corruption of which they had been convicted. The principle of this Bill has been recognised in the

Bill to repress bribery and intimidation at elections.

Act enabling Parliament to issue Commissions for inquiry into Bribery and Corruption at the places where they are alleged to have been committed. 1846. 1847.

The Bill to protect all persons in authority from vexatious actions was introduced by him in 1846, but did not pass. In 1847 it was again brought in; it passed the Lords, but was dropped in the Commons. In the following year an Act passed the Legislature (11 & 12 Vict. c. 44), giving the greater portion of that protection to justices of the peace, but not generally to all public functionaries. There were some other alterations in the Bill of 1847, by which its efficiency was rather impaired than otherwise. Bill to protect persons in authority from vexatious actions.

1848.

The Bill for the Protection of Women, introduced by Lord Brougham in 1848, was restricted to cases where the defilement was procured by persons for the purposes of gain. The Bill was enlarged in the following year; and, having been made applicable to all cases, became the statute 12 & 13 Vict. c. 76. It is commonly called the Bishop of Oxford's Act, that Prelate having suggested it. Bill for the protection of Women. Bishop of Oxford's Act.

In 1837 Lord Brougham introduced two Bills on the subject of the Clergy; one to prevent pluralities, the other non-residence. The provisions of both Bills are embodied in the 1 & 2 Vict. c. 106; but it must be admitted that they formed the groundwork of the Legislation which then took place. In 1850 he carried the Act by which the language used in the statutes is much simplified and abbreviated. It is the 13 Vict. c. 21. In 1852 he also carried, without any difficulty, another statute of great benefit to the legislature and the public at large, viz. that by which Parliament is now able to meet again after a dissolution at an earlier period than it formerly was. It is the 15th Victoria, chap. 23. 1850.

In 1853 Lord Brougham brought in his Bill for the Improvement and Consolidation of the Bankruptcy 1853.

1853.

Act to simplify and abbreviate Acts of Parliament.

Bill for the improvement and consolidation of the Scotch Law of Bankruptcy and Insolvency.

and Insolvency Law of Scotland. The Bill contains 266 clauses, and it was accompanied by a paper of observations by its author in explanation of its objects. It was prepared by the London committee under Mr. Slater.

1855.

Bill to relieve the conscientious scruples of Dissenting Clergy.

In 1855 two Bills were introduced by Lord Brougham on the subject of Religious matters; one for the relief of the Clergy of the Church of England who declare that they dissent from its tenets, and the other for the repeal of a variety of statutes by which persons are subjected to pains and disabilities on account of their religious opinions. The former Bill has been again introduced in the present year, with a proviso added that nothing contained in the Act should affect the indelible character of Holy Orders. This Bill was understood, when the proviso was added, to have the sanction of the Bishops, some of their number having joined in supporting the Bill.

Dr. Phillimore's Bill for abolishing the jurisdiction of the Ecclesiastical Courts in cases of defamation.

In 1855 he took charge in the Lords of Dr. Phillimore's Bill for abolishing the jurisdiction of the Ecclesiastical Courts of England and Wales in suits for Defamation, and introduced into it a clause, to be proposed on report, in order to give relief to persons then under sentence of imprisonment for the offence.

Two Bills for the advancement and protection of Literature, will be found in the list annexed to this Section, having been introduced in 1835; one to enable authors to have the sole power of publishing their lectures; the other empowering her Majesty to grant an extension of the time given in copyright, after approval by the Judicial Committee of the Privy Council.

1857.

Bill to amend the laws respecting the property of Married Women.

Two most important measures were introduced by Lord Brougham in the year 1857. The first of these, namely that for the amendment of the Law respecting the Property of Married Women, provides that, subject to the terms of her marriage settlement, the real and personal estate of a married woman at

1857.

the time of her marriage shall be to her separate use, and that all her after acquired property, and her earnings during coverture, shall also belong to her, and not be subject to the disposition of her husband, or liable to his control, debts or engagements. The husband in his turn is not to be liable to antenuptial debts of the wife, except as to the property settled by the marriage on himself or his children. Perhaps the most important provision of all is that whereby a married woman is empowered to bequeath her property during coverture, as if she were a feme sole. Lord Brougham prefaced this measure by an argumentative speech, upon which resolutions were moved by the noble and learned Lord, and the Bill was read a first time. A similar Bill was brought into the House of Commons by Sir E. Perry during the Session of 1857.

Provisions of Lord Brougham's Bill respecting the disposition of property by Married Women.

The other Bill which was mentioned as having been brought forward in the year 1857 during the last Session of the late Parliament, was that entitled An Act to prevent vexatious Litigation. Lord Brougham, in his Speech on Law Reform in 1828, and at many subsequent periods, has earnestly and perseveringly advocated the prevention of suits by improving the system of arbitration, and by the establishment of Courts of Reconcilement. We find this measure introduced into the Local Courts Bill in 1830, and from that period until the present time its author has never lost an opportunity of urging its adoption. His recommendation has, to a certain extent, been carried out in the new Common Law Procedure Act, by a section of which Judges are empowered to refer causes to arbitration before Judges of County Courts both before and at the time of trial before the Superior Courts. His object has been not so much to give parties facilities of reconcilement *after* action brought, as in the early stages of dispute, whereby much expence may be saved and many difficulties in the way of adjusting matters at issue between parties may be

Bill to prevent vexatious litigation.

Courts of Reconcilement a favorite topic with Lord Brougham, his object being to settle disputes *before* action brought.

1857.

Courts of Reconciliement.

prevented. The reader is referred to the arguments of Lord Brougham in favour of Conciliation, to be found in his speech on Local Courts.—(*Speeches*, ed. 1838, vol. 2, p. 522.) Nevertheless it must be acknowledged, that hitherto his proposal to extend to the Judges of these Courts far more ample powers than they at present possess of reconciling contending parties, has hitherto met with little encouragement in either House of Parliament.

Besides the Bills above enumerated which require especial notice, we find abundant fruits of his indefatigable labours in a multitude of other measures proposed by him at various times.

Mr. Brougham's Beer Bill was introduced in 1822, and became in 1830 the 11 Geo. 4 & 1 Wm. 4, c. 64.

In 1822, when Mr. Brougham, he brought in his Bill for the encouragement of the sale of Beer and Cider, by authority of which persons might, with licence, be empowered to sell any quantity of these liquors, provided the consumption should not take place upon the premises, even although they should not keep a common inn or alehouse. Previously to that time no person except an innkeeper could sell beer or ale by retail except in large quantities. The Bill did not pass, but in 1830 its provisions were enacted in the 11 Geo. 4 & 1 Wm. 4, c. 64. Subsequently in 1838 Lord Brougham proposed to allow beer, ale and cider to be sold without any licence, provided the liquor should not be drunk on the premises, but did not succeed in carrying his Bill. In 1839 he again brought it forward with slight alterations, but without success. By the present law an excise duty is payable, but on a reduced scale.

1838.

His proposal to allow Beer, Ale and Cider to be sold without license.

Among the remaining miscellaneous Bills which find a place in this Section, there are three worthy of especial notice. They were all laid on the table of the House of Lords in the year 1845, a year in which the legislative activity of their author seems to have been never exceeded. The first of these in the order of time is a Bill to enable all persons to trade and

1855.

work in the city of London, thus putting an end to the exclusive character of the liveries and guilds. The second provides that, in order to render valid a marriage solemnized in Scotland, the parties contracting it must either have both been born in that country, or resided there for three weeks next preceding the celebration of the same; this measure passed the Legislature in 1856. It also declared legitimate in all parts of the United Kingdom persons born in Scotland, and, by the laws of that country, held to be legitimate. By another section, divorces were facilitated in Scotland in cases where both the husband and wife had resided in Scotland for twelve months next preceding the institution of the suit for divorce in the Court of Session; these two provisions have not been adopted.

Act for the regulation of marriages in Scotland.

The third measure remaining to be noticed is that whereby landowners were intended to be better secured against expence incurred by the application to Parliament by the promoters of local and personal Acts. To obviate this inconvenience, which had become very oppressive in 1845, in consequence of the numerous applications for Acts establishing Railways, Lord Brougham proposed that either House of Parliament might order the promoters or petitioners for such Acts to enter into recognizances conditioned for paying the costs of parties opposing them. This proposition has however not been favourably entertained.

Bill to secure the payment of the costs of opposition by Promoters of Railways.

The catalogue of measures hitherto only partially adopted, or introduced as yet without success, would be incomplete without two of the greatest importance, viz. those respecting Criminal Proceedings and Judicial Statistics.

On the 23rd of March, 1855, Lord Brougham drew the attention of the House of Lords to the defects still existing in Criminal Procedure.* After glancing

Speech on Criminal Procedure.

* Lord Brougham's Speech on Criminal Law Procedure. Ridgway, 1855.

1855.

Defects in the present system of Criminal Procedure.

at some deficiencies in the Criminal Law itself, especially those breaches of trust which have been aimed at in the Act of the present Attorney General, he proceeds to divide the subject of his inquiry into four distinct heads, the first and second of which comprise the proceedings preliminary to trial; the third relates to trial itself; the fourth and last to conviction and punishment. Under the first head the defects and shortcomings of the present system of police are demonstrated; its extension generally throughout the provinces is recommended, and the appointment of stipendiary magistrates in all the larger towns is shewn to be necessary. Lord Brougham proceeds to urge that these magistrates should be intrusted with greater powers to discharge offenders on their own recognizances to appear to take their trial without bail by sureties. He argues that this may be done with safety, in consequence of the unwillingness of persons to leave the locality where they are known and have been in the habit of finding employment. After remarking that the magistrates have hitherto disregarded the power, given them by the 14 & 15 Vict. c. 55, to choose as Chairmen of Sessions for the exercise of their criminal jurisdiction the Judges of County Courts, he

Want of a Public Prosecutor.

dwells at some length on the necessity of a public prosecutor, a topic which he had already frequently urged, especially in his speech on Law Reform delivered in 1848. "Here," he says, "we at once experience one of the greatest, if not the greatest, defect of our system, the want of power in the executive government to provide for the execution of the law, by putting the criminal procedure in motion." "In no other country except America, if our kinsmen have carried over with them this fault of the English law, is the criminal procedure left to shift for itself, execution being everybody's business in theory, and so nobody's in fact." After shewing that the practice of prosecution being left in the hands of private in-

1855.

dividuals arose originally from the ideas and customs of a barbarous age, when the pecuniary loss to the individual injured or his family was considered alone entitled to consideration, and all crimes, even the most heinous, were compounded for by money, Lord Brougham points out the wrongs and inconsistencies which follow our adherence to this antiquated system, the hardship upon the accuser, the not unfrequent wrong and injustice to the accused. He cites the example of the jurisprudence of Scotland, as forming an honourable contrast to our own. Mr. J. G. Phillimore has done great good by his labours and by his committee on this subject. From the topic of a public prosecutor Lord Brougham passes to the third head, viz. that of trial, and commences by observing that grand juries, even with the many manifest advantages which drew from Blackstone enthusiastic eulogy, may be well dispensed with in all districts where a police magistrate holds the preliminary inquiry. This suggestion has been acted upon by Lord Chelmsford, at that time Sir F. Thesiger, in a Bill submitted to Parliament in 1857, and formerly carried through the Commons by Sir J. S. Wortley. Defective as is the grand jury in some particulars, we confess we reluctantly differ from such high authority, and regard its abolition, even in the limited sphere of the Metropolitan districts, not without regret and apprehension. It is a shield to protect the public from being unjustly assailed by the Crown, or injured by the prejudice or unskilfulness of the committing magistrate. To be empowered to put any man upon trial is a vast power, and it is the province and duty of a grand jury to see that this power is not unduly exercised. Nor would the public prosecutor, appointed by the Crown, be any adequate substitute for the safeguard to the liberty of the subject afforded by a grand jury.

Labours of Mr. J. G. Phillimore, M.P., to obtain the appointment of a Public Prosecutor

Proposition to dispense with grand jury in the metropolitan districts.

Objections to this course.

Lord Brougham goes on to advert to a great defect in our criminal procedure, viz. the long interval which

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Injustice of the long interval between committal and trial.

elapses between commitment and trial. To an innocent man the long incarceration in a prison, with the suffering inevitable upon a close commixture with felons, is a flagrant injustice. It becomes a manifest absurdity when the Judge, passing sentence on a convicted prisoner, counts the period of imprisonment before trial as part of his future punishment. In 1853 five thousand persons were acquitted, all of whom had on an average undergone four or five weeks imprisonment. This is also, in an economical point of view, a vast expence to the country. The remedy suggested is the more frequent holding of Sessions and Assizes, and the extension of the Central Criminal Court system to all the larger towns. "By arrangement of the Circuits and Assizes, and of those other local judicatures, there cannot be any difficulty in providing everywhere a Criminal Court once a fortnight." For this purpose an alteration of existing Circuits must take place. The result of the Commission lately appointed to inquire into the labours of the Judges of the Superior Courts, amply proves that the above suggestions of Lord Brougham have not received the weight to which they are entitled.

More frequent Assizes and Sessions recommended.

Punishment of criminals should be as far as practicable reformatory in its character.

Arriving at the last stage of procedure, the subject of punishment is now before us, and here he adverts to the established rule that the treatment should be, as far as possible, calculated to prevent a repetition of the offence at the expiration of the sentence. This great object he declares may be best attained by making the treatment reformatory. It is to be observed that hitherto the State has, to a great extent, neglected its manifest duty, viz. to endeavour to reclaim the offender and make him a useful member of society. If this be the duty of any government as regards adults, it is very much more so in the case of youthful criminals, from whom the benefits of education have been withheld, and who come under the strong arm of the law to receive punishment for offences at a period when

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their judgment and reasoning powers are as yet immature. This national duty is very imperfectly fulfilled when the public money is doled out to private individuals, or to charitable institutions, for the purpose of rendering assistance and encouragement to the undertaking of a responsibility which attaches to the State itself.

Duty of the State to endeavour to reform criminals.

After dwelling upon other topics incident to the punishment of convicts, the necessity of the same prison rules being universally followed, subject to modifications under the local authorities according to particular local circumstances, the necessity of a system of strict economy being made to pervade the whole system, as regards management and the diet of prisoners, and due care being taken at the same time of the health of prisoners, Lord Brougham closes this part of this subject with strongly recommending that part of the earnings of prisoners during their confinement should be given them upon quitting the prison. The prohibition of this judicious course had followed an unfortunate provision of the Prison Act of 1839 (2 & 3 Vict. c. 56, s. 8). To know that they shall receive part of their earnings is the best stimulus to the industry of the prisoner during his stay in the prison, and thus fosters the industrious habit so important to him when he recovers his liberty—while it gives him a certain sum to maintain himself with until he can get honest employment.

Prison regulations and management should undergo a great change.

Labour of convicts ought to be productive, a portion of the proceeds being paid to the convict on recovering his liberty.

The following are Lord Brougham's resolutions on Criminal Law Procedure, annexed to the speech thus shortly described:

Lord Brougham's resolutions.

1. That it is the duty of the Government to provide effectually for the execution of the Criminal Law by the discovery, the securing, and the prosecution of offenders.

2. That the Local Police establishments ought to be under the direct superintendence and control of the Government, as far as possible in concert with the local authorities; and

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that the same rules should, as nearly as local circumstances will permit, be everywhere applied.

Resolutions moved in the House of Lords on Criminal Procedure.

3. That the appointment of a regular constabulary force should be obligatory upon the local authorities.

4. That in addition to such regular force, a reserved force ought to be maintained of persons with moderate pay, to be called out for a short time yearly in order to be inspected and trained, and to be bound to serve when required by the magistrate.

5. That a sufficient number of stipendiary magistrates should be appointed in the other towns of considerable size with the powers and duties of those appointed for London and Middlesex, so far as these powers and duties relate to the examination and commitment of persons charged with offences, and to the criminal jurisdiction vested in them.

Public Prosecutor.

6. That the prosecution of offenders should be intrusted to an officer appointed by the Government, with such number of subordinate officers as may be required for conducting prosecutions in the counties and larger towns; but that until such a measure can be adopted, it is expedient to appoint barristers, who shall advise upon and conduct the prosecutions in the Central Criminal Court, and the Courts of Quarter Session of Middlesex and Surrey.

7. That the public prosecutor should, in all the graver cases, as the Pleas of the Crown and Forgery, proceed by bill before the grand jury; but in other cases should, at his discretion, be allowed to proceed upon commitment by a stipendiary magistrate, without any bill found.

More frequent assizes.

8. That assizes should be holden four times a year in each county, and quarter sessions so frequently, and at such times relatively to the assizes, as that a court of criminal jurisdiction should sit once a fortnight in each county.

Union of counties.

9. That to equalize the business, counties may be divided and parts of different counties united for the purposes of trial, and that persons may be tried at the option of the public prosecutor, either in the district where the offence is alleged to have been committed, or in an adjoining district.

County Courts to have the jurisdiction of quarter sessions.

10. That the same criminal jurisdiction should be given to judges of the county courts as is at present possessed by the quarter sessions of the peace; that this jurisdiction should extend over the district; subject to their civil jurisdiction; and that the justices of every county may be

1855.

released from the obligation to hold sessions oftener than four times a year, whensoever it shall appear that besides those four sessions and the assizes there is a sufficient number of county court criminal sittings to give two criminal courts monthly in the district.

Resolutions moved in the House of Lords on Criminal Procedure.

11. That a reasonable sum for trouble and expences should be allowed to all persons summoned to attend as petty jurors on any criminal trial.

Petty jurors to be remunerated.

12. That the costs of every person tried and acquitted, or discharged for want of prosecution, should be paid out of the county rates, on certificate of the court before whom he was tried or brought for trial, or of the magistrate by whom he was discharged; and that the committing magistrate should have power to certify what witnesses, at the public expence, may be brought to the place of trial on the prisoner's behalf.

Costs to persons acquitted.

13. That in all prisons arrangements should, as far as possible, be made not only for separating the untried from the convicted, but for separating different prisoners of both classes.

14. That imprisonment should, as far as possible, be accompanied with the means of giving work to those who are willing to work, and whether untried or sentenced to imprisonment without hard labour: that all the earnings of the untried should belong to them, and to the convicts a portion upon their discharge.

15. That a discretion should be vested in the governors, chaplains, and other superintendents of gaols, of improving the diet of convicts according to their demeanor and industry.

Internal economy and management of prisons.

16. That subject to the control of the superintendents, with the advice and consent of the chaplain, prisoners may be employed as assistant teachers in the prison.

17. That the dietary of prisons ought never to allow more to convicts in proportion to the term of their imprisonment: and that in respect of diet, regard should be had to the industry and other demeanor of convicts under their sentences.

18. That justices of the peace in all cases in which they have now power to take bail, and coroners in cases of manslaughter, should have the power of allowing any person accused to go at large upon entering into his own recognizances to appear and take his trial: and that in cases of

Bail in cases of manslaughter.

1855. 1856. manslaughter, coroners should also have the power to liberate upon bail.

Bill for the establishment of a system of Judicial Statistics.

On the 3rd of March, 1856, he introduced his Bill for the establishment of a system of Judicial Statistics, having a fortnight previously given notice of his intention to that effect. Lord Cranworth, Lord Chancellor, on the occasion of that notice, having desired an explanation of the term "Judicial Statistics," Lord Brougham thus explained it in the outset of the Speech with which he prefaced his Bill.

Extract from Lord Brougham's speech on the introduction of his measure.

"The term signifies the regular and constant record of the whole particulars connected with the administration of the Law in all its branches—its administration by all Courts, civil and criminal, general and local: the state of those Courts as to Judges and other office bearers: their whole proceedings through every stage: together with every matter concerning the working of the Law, though not having come within the cognizance of any tribunal—in a word, the record in minute detail, and for the most part in a tabular form, of all the facts connected with the execution of our laws. Needs there more be said to shew, I will not say the great value, but the paramount importance, nay, the absolute necessity, of this knowledge to the makers of those laws? Can we, I will not say conveniently, but rationally, nay, can we safely, can we honestly exercise our legislative functions without having this information upon the action of the laws which we make, or of those made by our predecessors, and which we are constantly required to abrogate, or alter or continue? We make some change in the system—we are bound to inquire how that new law works. Unless we know all the facts connected with its execution, how can we tell whether or not it was wisely, that is, usefully, adopted? Whether we should persist in our course or retrace our steps, or proceed in another direction? Jurisprudence is emi-

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nently a practical science, and the work of a safe, because a prudent lawgiver, is for the most part of a tentative kind. It behoves him to carry it on with a constant reference to the effects which his measures have produced. He can but dimly see even to the shortest distance before him; therefore is he bound carefully to look behind and on each side that he may be well assured he has made no mistake, and be full sure of his ground. When we are sailing on an unknown coast, or a coast little known, where we cannot have the benefit of a chart, how shall we hope to be safe, if we possess neither compass to guide our course or lead to give us soundings, and keep us secure from shoals and sunken rocks? Full and minute statistical details are to the law giver, as the compass, the chart, and the lead to the navigator." After this philosophical exposition of the value and necessity of Judicial Statistics as regards the operation of the experience to be derived from them upon future legislation, the author of the Bill contrasts our own shortcomings in this respect with the more advanced state of jurisprudence in France; and in doing so, pays a well deserved compliment to Mr. Redgrave of the Home Department, to whom, in a great measure, the public are indebted for our criminal returns, the only branch of statistics as yet established on a regular system. A great defect still existing in these, compiled as they are with great ability and care, is, that they have no reference to the time during which persons accused of offences are subjected to imprisonment before trial—nor again do they include those summarily convicted by magistrates, or in the Police Courts—nor is there any history of the punishments actually undergone by convicts. A knowledge of all these particulars would operate very powerfully on the important questions of more frequent trials of prisoners, of prison discipline, and of secondary punishments. We find that a full and minute detail is furnished of them in the French Annual Statistics.

Advantages of a properly organized system of Judicial Statistics.

Compliment paid to Mr. Redgrave of the Home Office.

Important branches still wanting.

Our Legislation herein inferior to that of France.

1856.

He passes on to comment on equity proceedings, and to point out how many abuses would long since have been rectified had Judicial Statistics been at hand to verify the arguments hurled against them.

After touching upon the absence of all statistical information as regards matters of police throughout the country, Lord Brougham passes on to proceedings in equity, and argues that the most palpable defects in the Courts of Common Law, of Chancery, and the Ecclesiastical Courts, would long ago have ceased to exist, had a history of their transactions been recorded, and thus revealed to the light of day. "But as the want of information is generally in criminal matters, the absence of it in civil proceedings of all kinds is incomparably more disgraceful to us. There is absolutely not a return of the kind made regularly either to the Court or to Parliament—not the least kind of the state of any of the Courts of Law or Equity, Admiralty or Consistory, except that once a motion of mine to your Lordships" (he alludes to a motion for returns respecting the Courts of Bankruptcy) "was made with a particular view, and by this chance we had a list of the Judges and their salaries:—nothing like an account of the business transacted by these Courts, except that the Commons, also for a particular purpose, directed a return of the County Court causes, which account happens to have been repeated; but there exists no return whatever of the causes in any of the other Courts, either general or in detail: and any one looking at our Parliamentary returns connected with the administration of justice, returns which it would be a cruel mockery, a very sarcasm, to call statistics, must conclude, if he had no other means of information, that there was no business carried on in this country of a civil nature, no causes tried, no judgments pronounced, no costs incurred, no delays to wear out the suitor's life, no expence to consume his substance. Only see the consequence of this most lamentable defect in the information promulgated by official documents, this total want of such information from official sources as to all that passes in our Courts of civil jurisdiction. See the sad effects of our having

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been left ignorant of all these particulars, that is, our being left without their being brought together and in one view, so as to produce the impression which can only be made by the light of such a concentration. Does any one dream for instance that the defects in the Court of Chancery could have continued so long to vex the suitor and discredit the law, had the whole of the suits been chronicled regularly here as they are in France, with their results and the period of their endurance? What possibility would there have been of the Legislature, but still more of the country, bearing for years, aye and for generations, I might say for ages, those defects, we may now call them grievous abuses—for they have been at length, and after a more than Chancery length of time, condemned and partially removed—those abuses which ended in making the name of the Court a term of reproach? My belief is that a regular, yearly table, exhibiting the causes, the delays, the costs, would even, without a department of Minister of Justice, have sufficed to produce years and years ago this great improvement." He proceeds to attribute the slow progress of many of the measures for the Amendment of the Law from year to year, till their ultimate adoption in a final measure, to the want of this record of facts connected with the law's administration, and instances the Evidence Bill introduced by himself in 1845, but not becoming law till 1851, as one great proof of the argument he propounds.

Judicial Statistics would long since have let in daylight upon the dark dungeons of the Court of Chancery.

At the close of his speech, he laid his resolutions on the subject of Judicial Statistics on the table of the House of Lords, and a few days afterwards brought in his Bill. The schedules annexed to it, fifty in number, had been ably and carefully prepared by a committee of the Law Amendment Society. Their insertion in the present volume has been considered unnecessary. In the early part of the present year, Lord Brougham again introduced his Bill on the same subject, which he stated had undergone careful revi-

Resolutions laid on the table, and Bill introduced.

1857.

He acknowledges the useful labours of Mr. Fonblanque, Mr. Rothery, and Professor Levi.

sion at the hands of the Society. He had already expressed his acknowledgments in its preparation to Mr. Fonblanque of the Statistical Department of the Board of Trade, to Mr. Rothery of the Admiralty Courts, and to Professor Levi, whose extensive information on all subjects connected with the Science and Statistics of Commercial Law he acknowledged had been most valuable to him.

Labours of Lord Brougham attended with success.

The first volume of Judicial Statistics presented to Parliament in 1857.

The labours of Lord Brougham in this fruitful field of Law Amendment, though they have not been successful hitherto so as to secure the adoption of his entire measure of Judicial Statistics, yet have resulted in the publication of a most useful volume presented in 1857, to both Houses of Parliament, and compiled by order of the Home Secretary. It contained returns for the year 1856, of matters immediately connected with the Home Department; of these there was a threefold division. The first section comprised Police and Constabulary matters, and contained statements of the police establishments and expences, the number of offences and offenders apprehended, and an account of the number of inquests held by coroners. The second related to Criminal Proceedings, and comprised the number of persons committed for trial at the assizes and sessions, with the results of the proceedings and the costs of prosecution. The third section had reference to Prisons, and contained an account of the state of prisons, the number of prisoners, a list of the prison establishments and a summary of the expences, together with returns of reformatory schools and criminal lunatics. The introductory and explanatory report accompanying the volume is a most able document, and reflects the greatest credit upon its author Mr. Redgrave. The compilation of the whole volume, which is to be continued annually, goes far to supply many of the defects, upon which the speech of Lord Brougham had so fully and forcibly dwelt. It is intended that the Statistics of Civil and Commercial

1822 to 1860.

Justice shall form the second part of the Home Office Judicial Statistics,* to be undertaken so soon as time has been afforded to complete and perfect the portion of the work already published.

The list of Miscellaneous Acts and Bills closes with the Bill introduced by Lord Brougham in the present Session, to abolish the plea of not guilty in Criminal trials, which belonged more properly to the sixth section, but is here mentioned as forming the last of his legislative labours.

MISCELLANEOUS ACTS AND BILLS.

LIST OF ACTS AND BILLS.

Bill intituled An Act for the more impartial Trial of Offences in certain Cases in Ireland. 1843.

Bill intituled An Act for furthering the Administration of Criminal Justice. 1845.

Bill intituled An Act for securing the real Independence of Parliament. 1845.

Ditto ditto reintroduced in 1848, with an Amendment.

Bill intituled An Act for furthering Inquiry into Bribery, Corruption, and Intimidation at the Election of Members to serve in Parliament. 1842.

Bill intituled An Act for protecting from vexatious Actions Persons discharging Public Duties. 1847.

Act to protect Justices of the Peace from vexatious Actions for Acts done by them in execution of their Office, stat. 11 & 12 Vict. c. 44. 1848.

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* The Common Law and Ecclesiastical Law Statistics have been appended to the volume published annually, since the publication of the work of which the present is an abridgment.

1822 to 1860.

Bill intituled An Act to protect Women from fraudulent Practices for procuring their Defilement. 1848.

Act to protect Women from fraudulent Practices for procuring their Defilement, stat. 12 & 13 Vict. c. 76. 1849. (Bishop of Oxford's Act.)

Bill intituled An Act to prevent Spiritual Persons in England and Ireland from having more Preferments than one. 1837.

Act for Shortening the Language used in Acts of Parliament, stat. 13 Vict. c. 21. 1850.

Act to Shorten the Time required for assembling Parliament after a Dissolution, stat. 15 Vict. c. 23. 1852.

Bill intituled An Act for the further relief of Dissenters. 1855.

Bill intituled An Act for the further Relief of the Subject from Penalties and Disabilities touching Religion and Religious Worship. 1855.

Act for abolishing the Jurisdiction of the Ecclesiastical Courts of England and Wales in Suits for Defamation, stat. 18 & 19 Vict. c. 41. 1855. (Dr. Phillimore's Bill, the 2nd section being added on Report by Lord Brougham.)

Bill intituled An Act for Preventing the Publication of Lectures without the Consent of their Authors. 1835.

Bill intituled An Act for the better Protection of Copyright and Encouragement of Learning. 1835.

Bill intituled An Act to Amend the Law with respect to the Property of Married Women. 1857.

Bill intituled An Act to Prevent Vexatious Litigation. 1852.

Bill for Amending the Laws touching the Retail Trade in Beer and Ale. 1822.

Bill intituled An Act to Repeal part of an Act of the First Year of his late Majesty (1 Wm. 4, c. 64), intituled An Act to permit the General Sale of Beer and Cider by Retail in England. 1838.

1822 to 1860.

Bill intituled An Act to Repeal in part an Act of the First Year of His late Majesty (1 Wm. 4, c. 64), intituled An Act to permit the General Sale of Beer and Cider by Retail in England, and An Act of the Third and Fourth Year of his late Majesty, 4 & 5 Wm. 4, c. 85, for Amending the said Act. 1839.

Bill intituled An Act to Prevent the Vexatious Removal of Indictments into the Court of King's Bench, and for Extending the Provisions of an Act of the Fifth Year of King William and Queen Mary (5 & 6 Wm. & M. c. 11), for preventing Delays at the Quarter Sessions of the Peace, to other Indictments. 1835.

Bill for Preventing the Abuse of Legislative Authority in the Colonies. 1839.

Bill intituled An Act touching the Insertion of Schedules in Newspapers. 1848.

Bill intituled An Act for rendering Proceedings in Equity in India more Expeditious. 1843.

Bill intituled An Act for enabling all Persons to Trade and Work within the City of London. 1845.

Bill intituled An Act for Amending and Improving the Law of Marriage. 1845.

Bill intituled An Act to enable the Houses of Parliament to order Recognizances for Costs in Local and Personal Bills. 1845.

Bill intituled An Act for the Removal of Obstructions in the Corn Trade in Scotland. 1850.

Bill intituled An Act for making Provisions for the Collection of Judicial Statistics. 1856.

Bill intituled An Act to alter the form of Pleading to Indictments in Criminal Trials. 1860.

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THE END.

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